SENATE—*Monday, May 12, 1986*

The Senate met at 12 noon and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Bless the Lord O my soul, and all that is within me, bless His holy name. Bless the Lord O my soul, and forget not all His benefits.—Psalm 103:1-2.

Father in Heaven, we have so much for which to be grateful and we so easily take for granted common blessings. We slept in clean, comfortable beds last night. Many slept on the street. We awakened. Many did not. We were motivated to get out of bed. Many were not. We ate a good breakfast. Many had none. We have responsibility, family, friends, love—many are drifting, lonely, and forgotten. We can see and hear and speak. Many are blind and deaf and have no power of speech. We have so much more than we need of everything all of the time. Many never have enough of anything they need at any time. Loving God, forgive our thoughtless ingratitude—make us aware of those who endure unrelenting pain and keep us compassionate and giving toward all who suffer need. In the name of Him whose unconditional love covers all people. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator DOLE, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished President pro tempore, Senator THURMOND.

SCHEDULE

Mr. DOLE. Mr. President, the Senate will resume consideration of the drug export bill today at 1 o'clock. No rollcall votes will occur during today's session. If rollcall votes are ordered, they will occur sometime tomorrow.

On Tuesday, the Senate will resume consideration of the drug export bill at 10 a.m. There will be an 11 o'clock ceremony honoring Mr. Shcharansky, but that has not been reflected in our schedule. Votes will occur in the afternoon on Tuesday and the Senate could be in session well into the evening tomorrow, in order to make substantial progress on the drug export bill.

On Wednesday, the Senate resumes consideration of the drug export bill at an early hour—I am not certain just what time—depending how late we are in Tuesday evening. And by unanimous-consent agreement entered into last Thursday, final passage of the drug export bill will occur no later than 1 p.m. on Wednesday, May 14.

Following disposition of the drug export bill, it is my hope that we can then turn to S. 2395, the Uniformed Services Retirement Act of 1986—votes could be expected on that—and hopefully complete action on that Wednesday.

SUPERFUND

Mr. DOLE. Mr. President, the Superfund Program technically expired last September 30. Fortunately, the Environmental Protection Agency had sufficient resources to avoid shutting down hazardous waste cleanup operations up until April of this year: And we have provided, on an emergency basis, a special 60-day appropriation to keep the Superfund Program alive through the end of May.

That deadline is fast approaching, particularly in view of the fact that we are scheduled to recess for Memorial Day on May 21. Time is short, and this important legislation already has been put off for too long. I am not criticizing anyone for that—it is a very difficult, very sensitive area, and some of the issues are tough to resolve. Nevertheless, they have to be resolved—and I hope that will be done in an expeditious manner, without the necessity of another extension.

Mr. President, let me say at the outset that the Senate has an outstanding record on Superfund. Our conferees, led by the very able Senator from Vermont [Mr. STAFFORD] and the Senator from New Jersey [Mr. LAUTENBERG] have been working for many months on a possible compromise with our friends from the House of Representatives. And we should not forget that the Senate took the lead in moving to reauthorize Superfund. The Senate bill was approved before last year's September 30 expiration date, while the House did not follow suit until December. For that matter, our efforts on this side of the Capitol to expand and extend the Superfund Program date back to 1984. As Chairman STAFFORD will recall, he and I made a concerted effort at that time to reach agreement between the Finance Committee and the Environment and Public Works Committee on a Superfund bill. We fell a bit short, and it would be better for all concerned had we succeeded then—that is, in 1984.

But reviewing the record will not get the job done now. There are many sticky issues to be resolved before we can send a Superfund bill to the President, and I am prepared to assist in any way I can to reach that goal. The Senate is ready to move: Last week our distinguished assistant majority leader, AL SIMPSON, helped make major strides in moving the conference along. I urge my colleagues in the House to strike a bargain with our conferees. It is difficult enough to bridge the gap between the House and the Senate—without differences among House Members.

This is a matter of great interest. We are talking about spending a great deal of money—billions and billions of dollars. There is no doubt about a strong bipartisan consensus, and with the administration's assistance we believe that this matter can be resolved. So, I would urge my colleagues to do their best and to do it before we recess on May 21. There is a job to do: Let's get on with it.

STRONG CONSENSUS

Mr. President, let no one doubt that there is a strong consensus in the Congress for a strengthened Superfund Program. The administration's proposal for spending $5.3 billion over 5 years is 3½ times the funding level over the past 5 years. The Senate-passed bill provides $7.5 billion over 5 years, and the conference seems prepared to agree on a fund in the range of $8.5 billion. That is a big, big commitment to make to cleaning up hazardous wastes, particularly at a time of severe budget restraint. But we are prepared to do it, Republican and Democrat alike—because we know the severity of the problem, and because our people have told us they want action to reduce the danger of toxic wastes.

Again, I am prepared to assist our conferees in any way to help resolve this matter. I thank my colleagues for their attention.

TAX REFORM

Mr. DOLE. Mr. President, let me finally suggest that it would still be our intention to bring the real tax reform bill to the Senate floor following the Memorial Day recess. That time could be slipped if something should develop. But it would be my hope that we could keep that schedule so that we could clear the decks for appropriation bills and other matters that would be coming before the Senate very quickly.

Obviously, there will be areas in this very comprehensive tax bill that need to be modified or changed or technical corrections made, and there will be a number of areas that Members will feel strongly about and wish to change. Since the vote in the committee was 20 to 0, every Democrat, every Republican voted to report the bill, I hope that all of us would keep our powder dry before we start choosing up sides on how we are going to make an assault on this provision, or how we are going to make an assault on that provision, or how we are going to add something that is not in the Senate Finance Committee bill. It would seem to me that the chairman, Senator PACKWOOD, and Senator LONG have provided leadership, as have others on the committee. And I think it would be their hope that we would not start getting set in concrete in certain areas until we finally know precisely what the Senate Finance Committee bill contains.

□ 1210

It is my understanding that a summary of the tax bill will be released today by the Senate Finance Committee. After Members have had a chance to view that carefully, I am certain that Senator PACKWOOD, the chairman of the committee, will be happy to discuss—personally or through staff—any area with which any Member might have a problem. And I think I can say the same with respect to the distinguished Senator from Louisiana [Mr. LONG], who will be a major factor in the floor debate.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDING OFFICER (Mr. CHAFEE). Under the previous order, the Democratic leader is recognized.

Mr. BYRD. I thank the Chair.

EDUCATION NEEDS OUR SUPPORT

Mr. BYRD. Mr. President, I have read several newspaper articles lately reporting the results of a new international study of mathematics. These reports indicate that American students lag behind those of most other industrialized nations in math skills. Because of my strong interest in supporting education excellence in America's schools, the appearance of these articles has aroused, once again, my deep concern.

Such reports—based on international data or national data—were common several years ago when "a nation at risk" and the other major studies of the crisis in education were published. But, the focus of attention in the national press lately seems to have shifted to more positive stories reporting the secondary education reform proposals being implemented at the State and local levels around the country. Where such proposals have not been fully implemented, however, the culprit often is the lack of funding—from the State and local levels, and, I will underscore, from the Federal level.

According to the most recent issue, released last week, of the highly regarded "estimates of school statistics, 1985-86" annual report by the National Education Association, Americans raised their spending for public education, grades K through 12, by an estimated $9.1 billion in 1985-86. This represents a growth of roughly 7 percent over spending for last year. But, according to the NEA, this amount is still inadequate because scholarly estimates indicate that comprehensive education reform requires a 20- to 25-percent spending increase.

Also, the report shows that the Federal share of these resources fell, once again. The Federal share for this spending last year—the 1984-85 school year—was a record low for the decade at 6.6 percent of total nationwide spending, but for 1985-86, it has fallen to 6.4 percent. The State share rose to an estimated 50.1 percent for the period, and the local share is at 43.5 percent.

Achieving educational excellence for America's students requires that the Federal Government share the financial responsibility with the States and localities. But, obviously, new Federal funds for education have not been forthcoming in recent years. Sadly, Federal support even for basic education programs has decreased in real terms over the past 5 years.

Unfortunately, these past few years have been a continuous effort to keep the Federal role in education from being emasculated. To say that there has not been support from this administration is an understatement. It has been this administration that has led the fight to cut each and every Federal program geared toward education. It is little wonder then, that the Federal Government has not contributed to any meaningful degree to the very important and necessary education reforms being undertaken nationwide.

Mr. President, the reports of the international math comparisons to which I referred earlier increase my concern over this administration's attitude about the appropriate Federal role in education. The study is the second international mathematics study, a 20-nation survey conducted in 1981-82 of 8th and 12th grade mathematics students. In the survey, U.S. 8th graders received an average score of 48 percent, ranking 12th among 14 industrialized nations. Japan, with an average score of 62 percent, ranked first.

For 12th graders, the survey showed that U.S. students received an average score of 52 percent in algebra and calculus, ranking 12th among 12 industrialized nations.

Japanese students—to their credit and to the credit of the Japanese people's emphasis on education—again ranked first, with an average score of 66 percent.

The results of this study were published last month, in only a most cursory graph form, in the Department of Education's new booklet, "What Works." There were no explanations accompanying the graphs to explain the data base or how the graphs might be best interpreted. On the contrary, there was only the stark presentation of the United States on the low end of the results. This presentation was sure to spark gloomy newspaper headlines—and it did.

Mr. President, it is not my intent here to gloss over the results of the study. The fact that U.S. students scored poorly vis-a-vis other industrialized nations is cause for real concern. I hope such concern is translated into more support for meaningful education assistance at the Federal, State, and local levels.

But, Mr. President, I cannot help but point out the extremely inadequate way—to my thinking—in which the Department of Education chose to publish these results. As I have already pointed out, the results appeared in graph form only, with no explanation whatsoever.

Graphs are a good, clear method for presenting data. But, in and of themselves, they are limited, because the completeness of results that can be pictured in any one graph is limited. For the whole story, one needs either many graphs or explanatory material. Neither was included in the Education Department booklet.

For example, a report issued earlier this month by the Congressional Budget Office, entitled "Trends in Educational Achievement," states:

> (The) recent international assessment of mathematics achievement suggests that select American students—in this case, those taking calculus while in high school—have improved in mathematics. This assessment, carried out in 1981-82 in a national sample of American schools, included testing seniors in calculus and pre-calculus classes together, about 10 percent to 12 percent of seniors. The performance of this group was slightly superior to that of comparable students in a similar international assessment 17 years earlier. . . . This improvement appears to have been far stronger among the students in the calculus classes.

Another important deficiency, I believe, is that the presentation of the study's results in the booklet was not put in context. This study was administered to students in 1981 and 1982. However, those were years just prior to implementation of reforms in high schools in virtually all corners of the Nation.

The Council of Chief State School Officers informs me that these reforms include the following:

Most States increased graduation requirements in 1983-84.

Efforts to enrich the course curriculum, not just require more course work, began occurring nationwide at about the same time.

According to the most recent data, 29 States now require competency tests in mathematics. Another 10 States are considering such requirements. These requirements have been instituted, for the most part, since 1981-82.

Since September 1981, 19 States have raised curriculum requirements, and another 10 States have such reform under consideration.

Since September 1981, 43 States have raised graduation requirements in math and science. Another five have such reform under consideration.

Since September 1981, 15 States have passed initiatives to require an exit test, or graduation examination, in mathematics, and another 4 States are considering such an examination.

Since September 1981, eight States have initiated a test to serve as a criterion for promotion from grade to grade, and another three are considering such a test.

Mr. President, the international study cited by the Department of Education's publication clearly was undertaken prior to some fundamental changes in American secondary education. I believe that understanding this context is important in giving value to the results. This context in no way negates the results of the study. The 1981-82 study is the most recent international comparison and therefore has value. But, because of the subsequent nationwide reforms, one could safely assume that the shelf life of this study is limited.

The readers of the "What Works" booklet should keep this in mind. Unfortunately, they will have to ferret out this information for themselves—the Department of Education provides no assistance.

The Department says its new booklet is geared primarily to the adult with a child—or grandchild, niece, stepchild, neighbor—in school or soon to enter school. The booklet says it was prepared in an attempt to demystify education research and present it to the American people in a way that is useful and understandable.

The Secretary of Education states in the foreword:

> I for one am confident that the American people are ready, willing, and able to improve their schools, and assist their children to learn. The principal contribution that the Federal Government can make is to supply good information to the American people as they embark on this endeaver. Armed with good information, the American people can be trusted to fix their own schools. As this report makes clear, there is also much they can do at home.

I, too, Mr. President, believe strongly that the American people are ready and willing to fix their schools. But, just as I believe in the efficacy of the efforts of American parents, I also believe that government, at all levels, must supply more than just raw information in order to assure a quality system of education in this country. To imply that it is up to the individual parent to assure quality educational opportunity for the children of America, absent the support that only can be provided by government, including the Federal Government, is ludicrous. And, it would be dismissible were it not the view held by this administration.

The fact that, in the most recent international comparisons, U.S. students fared badly vis-a-vis those of other nations greatly disheartens me. That the Department of Education, however, should issue a booklet which not only is incomplete in the information it provides, but also confuses the issue and ignores the responsibility of the Federal Government, is, perhaps, even more disturbing.

When the Senate considered the budget for fiscal 1987, it rejected the administration's budget priorities. We voted to add more funding for math and science programs and to add inflation adjustments to the Federal budget for major education programs. But more needs to be done. I have the very sad feeling that this administration is being extremely penny-wise and pound-foolish in its refusal to help American schools regain the strength and standard of excellence this Nation needs. I hope that the folly of such an approach is soon reversed, for our future national security and economic prosperity depend upon it.

□ 1220

SENATOR HAWKINS' SPECIAL ORDER

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is recognized for not to exceed 5 minutes. It is my understanding that the Senator from Alaska will submit the statement for the Senator from Florida.

The Senator from Alaska.

Mr. STEVENS. Mr. President, as you have stated, I have been asked by the distinguished Senator from Florida to present a statement for her, and this time was set aside for her special order.

I shall read the statement.

The statement is entitled "Bulgaria, a New Ally in the War on Drugs or a Wolf in Sheep's Clothing." This is Mrs. HAWKINS' statement:

BULGARIA: A NEW ALLY IN THE WAR ON DRUGS OR A WOLF IN SHEEP'S CLOTHING

Mrs. HAWKINS. Mr. President, I read with appreciable interest a New York Times story last Tuesday which suggested that "Bulgaria has adopted a more cooperative attitude to American requests for help in the hunt for international narcotics dealers and couriers." The Times said the source of its story was the U.S. Ambassador to Bulgaria, Melvin Levitsky, who was quoted as saying, "We're pleased we're making some progress in terms of cooperation and information sharing."

I will have to be counted as one of the skeptics about a real change in Bulgarian policy toward the United States. A leopard does not easily change its spots. I am afraid that whatever mild gestures of cooperation in the war on drugs the Bulgarians have ladled out to us amount to trying to dress a wolf in sheep's clothing. We must not be deceived; we should not be taken in by these overtures.

One should be skeptical about the deeds and motives of Bulgaria. For one thing, Bulgaria is solidly in the Soviet bloc of nations, is a stalwart member of the Warsaw Pact and can be relied upon to support faithfully the Soviet Union in any of its objectives. Bulgaria is undoubtedly concerned about its international image and standing in the world community. It received a well-deserved black eye for the operations of the KINTEX trading organization which profited from narcotics smuggling and arms trafficking. In this connection Bulgaria showed either extraordinary tolerance toward drug smugglers or outright collusion with them. Bulgaria was also chagrined at Italian court charges of complicity in the assassination attempt on Pope John Paul II. And not the least of Bulgaria's concerns is the criticism it has received from other nations for its reported persecution of the Turkish minority in Bulgaria.

For some time many questions have been raised about some of the things that go on in Bulgaria. For instance, travelers have observed many young people in expensive hotels, lounging in the lobbies and mingling in the public rooms, apparently with little to do and no visible means of livelihood. These youths identify themselves as students of various Bulgarian colleges and universities, although judging from the amount of time they spend hobnobbing they could not be attending classes. It is more likely that they are involved in the drug trade. Western narcotics sources told the New York Times that the capital city of Sofia and Bulgarian seashore resorts frequented by foreigners are places where deals are regularly made for the sale and delivery of heroin and other narcotics from Asia and the Middle East to Western Europe. These sources said that Bulgaria, a country that keeps rather close watch over foreigners, cannot be ignorant of what is going on and must be profiting from narcotics transactions, such as payment in drugs for weapons it supplies to terrorist groups and so-called "liberation" movements.

I am not saying that the Bulgarians are incapable of dealing with democratic nations on a honorable basis. And I am not saying that their professed cooperation in the exchange of drug information is some devious plot, and the minute our backs are turned, they'll pounce on us or do us in somehow.

What I am saying is that given the Bulgarians' track record in international coop-

eration we should be wary. We should examine every facet of what we do and agree to. We should examine the Bulgarians' every overture. We should check, and recheck. We should be prudent. This could well be a situation where it is better to be safe than sorry.

Mr. President, that finishes the special order of the distinguished Senator from Florida.

I thank the Chair.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for not to exceed 5 minutes.

WHAT'S WRONG WITH STAR WARS

Mr. PROXMIRE. Mr. President, what's wrong with star wars? Many, many things. First it constitutes a direct deliberate repudiation of an arms control treaty that the United States drafted and then negotiated for many years to secure. In the 1960's the Soviets initiated their star wars system. Our negotiators argued with them that the U.S.S.R. building of star wars would require the United States to greatly step up its accumulation of offensive missiles. We contended that we could and would build whatever number of missiles it would take to overwhelm their antimissile defense. We pointed out that we could do this at a far lower cost than the cost of building defensive systems. For years the Russians disagreed. Finally, they recognized we were right. So they agreed with us. In 1972, President Nixon signed the ABM Treaty—limiting star wars for each superpower to two sites. Then the 174 protocol limited both parties further to one site each. The Senate ratified the treaty by an 89 to 2 vote. Note that margin. The vote to ban star wars was overwhelming. It was bipartisan. It was 89 for. Exactly 2 against. Republicans agreed with Democrats. Conservatives agreed with liberals by a tremendous margin that we should outlaw star wars. Now the President of this country, the country that was champion of the antistar wars treaty has persuaded the Congress to begin the reversal of that 89 to 2 vote and to engage in a buildup that will repudiate the treaty. Was President Nixon wrong in 1972 to sign the ABM Treaty preventing a comprehensive star wars system? Were the 89 Senators who voted for the treaty wrong? Were the two lone Senators who voted against the treaty right? What has changed since 1972? Has there been any transformation in the world of physics and space science that now gives the defense an advantage over the offense in a nuclear confrontation?

The fact is, Mr. President, that nothing basically has changed.

The most competent scientists in this country, independent scientists, agree that star wars will not work. A recent poll of the Nation's physicists disclosed emphatic opposition to star wars based squarely on the belief that it will not work. Every former Secretary of Defense who has taken a position on the issue uniformly and emphatically opposes star wars. Former Secretary of Defense Brown—who is also an eminent physicist calls it an impossible dream. Former Secretary of Defense Schlesinger who served two Republican Presidents has been vigorous in his opposition. Even without adding to their present nuclear force the Soviets' present 10,000 strategic warheads could certainly achieve a 10 percent or 1,000 warhead penetration of the most successful conceivable star wars system. but if only 1 percent or 100 of the U.S.S.R.'s present nuclear arsenal penetrated to strike American cities, there would instantly be between 35 and 55 million dead Americans with tens of millions more terminally ill and with hospital facilities gone. This consequence is the conclusion of a study by the National Academy of Sciences, America's most prestigious scientific organization.

It gets worse. Here's why: star wars won't be deployed this year. It won't be deployed in this decade. It won't be deployed in this century. It won't be deployed before 2010 at the earlest. By then the Soviets would have an entirely different nuclear arsenal.

They would have an enormous array of cruise missiles. Here is a cruise missile, which I hold in my hand, It is small. It looks like a very, very small plane, and it is small compared to the kind of bombers that we had in the past, but this is a devastating weapon, believe me.

The cruise missile would launch from submarines along the thousands of miles of coastline. Those cruise missiles could strike every American city with each warhead of the thousand launched carrying the equivalent of 250,000 tons of TNT. The cruise missiles hug the ground. They carry a map in the brain. They would under fly, I repeat they would under fly any star wars defense. The Soviets would be able to swamp star wars defense with hundreds of thousands of decoys. The Soviets could and would by 2010 in fact adapt the very technology developed for star wars—laser beams, and so forth to overcome it. The basic principle that the advantage lies with the offense would apply as well in 2010 as it always has. The offense picks the time, the place, the intensity of attack. The defense must react under conditions chosen entirely by the offense. It is quite a disadvantage. Even in the one chance in a hundred that we could build an effective star wars defense for a trillion dollars and maintain and modernize it for say $300 billion annually. In time—a month, a year, 3 or 4 years—Soviet technology could find a way to penetrate it.

MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, my myth of the day is that illiteracy is not a serious problem among adult Americans.

The sad, shocking, and embarrassing fact is that as many as 25 million Americans cannot read the warning label on this drug bottle or the help wanted section of this newspaper.

Recently, the Department of Education released the most comprehensive study ever done of illiteracy in our Nation, and found that 13 percent of adults could not show a clear understanding of simple written words and phrases such as "When can you return?" or "Enter your social security number here." Several other reports confirm the shameful pattern described by the Department of Education study. For example, in 1975 a study found that one-half of American adults were unable to proficiently perform everyday tasks such as read a letter from their child's teacher, or write a grocery list.

How many millions of dollars do we pay out in welfare costs and unemployment compensation because individuals cannot follow written instructions for performing a job or read the help wanted ads in seeking employment?

How many industrial accidents or faulty products are a result of workers being unable to understand written instructions?

Mr. President, many of us have traveled to foreign countries where we are not proficient in that nation's native language. How frustrating it is to be unable to read a menu in a restaurant, or follow the written instructions to assemble a simple product. While most illiterate Americans can converse in English, a large number cannot understand or speak English and therefore find themselves helpless in many situations.

We are appalled when we learn that illiterate college athletes are permitted to remain in school so that their athletic skills can bring glory and dollars to their college or university. Pathetically, this abuse is merely the top of the iceberg. With tens of millions of Americans functionally illiterate, we must ask educators and public officials at every level to re-examine the effectiveness of current education and training programs.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1300

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 1 p.m., with statements therein limited to 5 minutes each.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that he had approved and signed the following enrolled bills and joint resolutions:

On April 18, 1986:

S.J. Res. 136. Joint resolution to authorize and request the President to issue a proclamation designating the calendar week beginning with Sunday, April 13, 1986, as "National Garden Week."

On April 23, 1986:

S.J. Res. 315. Joint resolution designating May 1986 as "Older Americans Month."

On April 24, 1986:

S. 1282. An act to amend the Public Health Service Act to revise and extend the programs of assistance for primary health care.

S.J. Res. 286, Joint resolution to designate the week of April 20, 1986, through April 26, 1986, as "National Reading Is Fun Week."

S.J. Res. 303, Joint resolution to designate April 1986, as "Fair Housing Month".

On May 1, 1986:

S. 1684. An act to declare that the United States holds certain Chilocco Indian School lands in trust for the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma.

S. 2319. An act to provide for the continuation of the Martin Luther King, Jr., Federal Holiday Commission until 1989, and for other purposes.

S.J. Res. 214. Joint resolution providing for reappointment of Carlisle H. Humelsine as a citizen regent of the Board of Regents of the Smithsonian Institution.

S.J. Res. 215. Joint resolution providing for reappointment of William G. Bowen as a citizen regent of the Board of Regents of the Smithsonian Institution.

S.J. Res. 275. Joint resolution designating May 11 through May 17, 1986, as "Jewish Heritage Week."

S.J. Res. 296. Joint resolution to designate October 16, 1986, as "World Food Day."

On May 8, 1986:

S.J. Res. 264. Joint resolution designating April 28, 1986, as "National Nursing Home Residents Day."

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

ENROLLED JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of May 8, 1986, the Secretary of the Senate, on May 9, 1986, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker pro tempore [Mr. WRIGHT] had signed the following enrolled joint resolutions:

S.J. Res. 247. Joint resolution to designate the week of June 1 through June 7, 1986, as "National Theatre Week";

S.J. Res. 267. Joint resolution designating the week of May 26, 1986, through June 1, 1986, as "Older Americans Melanoma/Skin Cancer Detection and Prevention Week";

S.J. Res. 281. Joint resolution to designate the week of May 11 through May 17, 1986, as "Senior Center Week";

S.J. Res. 288. Joint resolution to designate the month of May 1986, as "National Birds of Prey Month";

S.J. Res. 316. Joint resolution prohibiting the sale to Saudi Arabia of certain defense articles and related defense services; and

S.J. Res. 324. Joint resolution to designate the week beginning May 18, 1986, as "National Digestive Diseases Awareness Week".

MESSAGES FROM THE HOUSE

At 12:18 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4767. An act to deauthorize the project for improvements at Racine Harbor, WI.

ENROLLED BILLS SIGNED

H.R. 737. An act for the relief of Ms. Chang Ai Bae; and

H.R. 1207. An act to award a special gold medal to the family of Harry Chapin.

The enrolled bills were subsequently signed by the President pro tempore [Mr. THURMOND].

At 2:01 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills and joint resolution, without amendment:

S. 8. An act to grant a Federal charter to the Vietnam Veterans of America, Inc.;

S. 2308. An act to authorize the President of the United States to award congressional gold medals to Natan (Anatoly) and Avital Shchransky in recognition of their dedication to human rights, and to authorize the Secretary of the Treasury to sell bronze duplicates of those medals; and

S.J. Res. 323. Joint resolution to designate May 21, 1986, as "National Andrei Sakharov Day."

At 2:37 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4021. An act to extend and improve the Rehabilitation Act of 1973; and

H.R. 4515. An act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

S. 2308. An act to authorize the President of the United States to award congressional gold medals to Natan (Anatoly) and Avital Shchransky in recognition of their dedication to human rights, and to authorize the Secretary of the Treasury to sell bronze duplicates of those medals.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on May 9, 1986, she had presented to the President of the United States the following enrolled joint resolutions:

S.J. Res. 247. Joint resolution to designate the week of June 1 through June 7, 1986, as "National Theatre Week";

S.J. Res. 267. Joint resolution designating the week of May 26, 1986, through June 1, 1986, as "Older Americans Melanoma/Skin Cancer Detection and Prevention Week";

S.J. Res. 281. Joint resolution to designate the week of May 11 through May 17, 1986, as "Senior Center Week";

S.J. Res. 288. Joint resolution to designate the month of May 1986, as "National Birds of Prey Month";

S.J. Res. 316. Joint resolution prohibiting the sale to Saudi Arabia of certain defense articles and related defense services; and

S.J. Res. 324. Joint resolution to designate the week beginning May 18, 1986, as "National Digestive Diseases Awareness Week."

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, May 12, 1986, she had presented to the President of the United States the following enrolled bill:

S. 2308. An act to authorize the President of the United States to award congressional gold medals to Natan (Anatoly) and Avital Shcharansky in recognition of their dedication to human rights, and to authorize the

Secretary of the Treasury to sell bronze duplicates of those medals.

REPORTS OF COMMITTEES SUBMITTED DURING ADJOURNMENT

Under the authority of the order of the Senate of May 8, 1986, the following reports of committees were submitted on May 9, 1986, during the adjournment of the Senate:

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2129. A bill to facilitate the ability of organizations to establish risk retention groups, to facilitate the ability of such organizations to purchase liability insurance on a group basis, and for other purposes (with additional and minority views) (Rept. No. 99-294).

EXECUTIVE REPORTS OF COMMITTEES SUBMITTED DURING ADJOURNMENT

Under the authority of the order of the Senate of May 8, 1986, the following executive reports of committees were submitted on May 9, 1986, during the adjournment of the Senate:

By Mr. THURMOND, from the Committee on the Judiciary, without recommendation:

Daniel A. Manion, of Indiana, to be U.S. circuit judge for the seventh circuit.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. COHEN (for himself and Mr. LEVIN):

S. 2433. A bill to amend the Office of Federal Procurement Policy Act to provide a simplified competitive acquisition technique for certain Federal Government procurements; to amend the Federal Property and Administrative Services Act of 1949 to prescribe a preference for the procurement of commercial and commercial-type products to meet the needs of civilian agencies of the Federal Government; and to require a test program to determine the advisability of increasing the threshold amount for requiring certain notice of solicitations; to the Committee on Governmental Affairs.

By Mr. HATCH (for himself, Mr. KENNEDY, Mr. CHAFEE, and Mr. BRADLEY):

S. 2434. A bill to amend the Public Health Service Act to require the Secretary of Health and Human Services to prepare announcements for television on the health risks to women which result from cigarette smoking; to the Committee on Labor and Human Resources.

By Mr. WILSON (for himself and Mr. LAUTENBERG):

S. 2435. A bill to improve international intellectual property protection, to improve foreign market access for United States companies that rely on intellectual property protection, and for other purposes; to the Committee on Finance.

By Mr. STEVENS (by request):

S. 2436. A bill to preserve the rights of the United States as a mortgagee under title XI of the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

By Mr. BENTSEN (for himself and Mr. HEINZ):

S. 2437. A bill to remove foreign policy controls on exports to the Soviet Union of oil and gas equipment and technology; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATCH (by request):

S. 2438. A bill to extend and amend programs under the Head Start Act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. GARN (for himself, Mr. PROXMIRE, Mr. KERRY, Mr. HATCH, Mr. LUGAR, Mr. SARBANES, Mr. STAFFORD, Mr. LEVIN, Mr. CHAFEE, Mr. PELL, Mr. GRASSLEY, Mr. CHILES, Mr. MCCLURE, Mr. SIMON, Mr. NUNN, Mr. MOYNIHAN, Mr. LEAHY, Mr. LAUTENBERG, Mr. BAUCUS, Mr. DECONCINI, Mr. WEICKER, Mr. BOSCHWITZ, Mr. EAGLETON, Mr. BRADLEY, Mr. BENTSEN, Mr. KENNEDY, Mr. JOHNSTON, Mr. GORTON, Mr. CRANSTON, Mr. SYMMS, and Mrs. HAWKINS):

S.J. Res. 341. Joint resolution to designate the week beginning June 1, 1986, as "National Neighborhood Housing Services Week"; to the Committee on the Judiciary.

By Mr. DOLE (for Mrs. HAWKINS) (for herself, Mr. DURENBERGER, Mr. MITCHELL, Mr. ABDNOR, Mr. RIEGLE, Mr. DOLE, Mr. BRADLEY, Mr. SPECTER, Mr. TRIBLE, Mr. LONG, Mr. COCHRAN, Mr. NICKLES, Mr. LUGAR, Mr. NUNN, Mr. HATCH, Mr. HOLLINGS, Mr. KASTEN, Mr. ZORINSKY, Mr. GARN, Mr. KENNEDY, Mr. ANDREWS, and Mr. SIMON):

S.J. Res. 342. Joint resolution to designate May 25, 1986, as "Missing Children Day"; to the Committee on the Judiciary.

By Mr. D'AMATO:

S.J. Res. 343. Joint resolution designating the week of September 21, 1986, through September 27, 1986, as "Emergency Medical Services Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. KENNEDY, Mr. CHAFEE, and Mr. BRADLEY):

S. 2434. A bill to amend the Public Health Service Act to require the Secretary of Health and Human Services to prepare announcements for television on the health risks to women which result from cigarette smoking; to the Committee on Labor and Human Resources.

CIGARETTE SMOKING PUBLIC SERVICE ANNOUNCEMENTS ACT

Mr. HATCH. Mr. President, a famous cigarette commercial tells the women of this country: "You've come a long way baby." Well, Mr. President, they have come a long way—in a deadly direction. In 1986, lung cancer will become the No. 1 cause of cancer death in women. More than 41,000 women will die from lung cancer, and if current trends continue, 1 of every 33 women in this country will succumb to this preventable disease. Yes, preventable—because most of these deaths, more than 30,000 of them, are directly caused by women smoking.

But, cigarette smoking's grim harvest doesn't end there. It is responsible for a number of other diseases besides lung cancer. Cigarette smoking doubles the risk of heart attack, accounting for over 150,000 deaths annually. Smoking also increases the risk of strokes and in fact, has been associated with all forms of vascular disease. Nearly 90 percent of the cases of emphysema and bronchitis are caused by cigarette use.

Women who smoke face special risks, especially during pregnancy. Smoking increases the risk of spontaneous abortion and neonatal deaths. Women who smoke are also more likely to have lower birth weight babies. In addition, women who smoke and are on birth control pills are much more likely to have complications. Most doctors recommend that women who smoke not use birth control pills.

If all that isn't bad enough, it's now becoming clear that smoking also presents risk to others. When parents smoke in the home, a child is more likely to have asthma, bronchitis, pneumonia, and strep throats. Many children have their asthma cured if the parents simply quit smoking. It is especially important that the parents not smoke during the first few months of life, while a child's lung are developing most rapidly.

Studies are now proving there is no safe level of exposure to cigarettes. That exposure to as few as two cigarettes a day can increase our risk of premature death.

We have made progress in our battle against cigarettes, but not enough. The good news is that per capita cigarette consumption has fallen to its lowest point since 1944 and the number of people who have quit smoking has doubled over the last 20 years. In the last 10 years the number of male adult smokers has fallen by 9 percent, from 42 percent of the population to 33 percent. The bad news is that we have only seen a 4-percent decrease for women over the same time.

The Federal Trade Commission has found that less than 50 percent of women are aware of the health risk of smoking during pregnancy.

Mr. President, the cigarette companies are spending an extraordinary amount of money advertising and developing brands of cigarettes aimed directly at women. Somehow, women have to hear the other side. We have to make sure women know that they face the same risks from smoking that men do, but also face special risks just because they are women.

To make sure that women hear both sides of the story, today I am introduc-

ing legislation to provide $1 million for public service announcements to inform women of the special health risks they face related to cigarette smoking. This money will come from the National Institute of Drug and Alcohol Abuse budget and the programs will be developed in consultation with the Office on Smoking and Health. This is a small investment compared to the estimated $38 to $95 billion that smoking drains from our economy each year.

I hope my colleagues will join with me and support this effort to inform women about the health risk of smoking so that the next time we say, "you've come a long way baby," we will mean a long way toward better health—not the morgue.

Mr. President, I ask unanimous consent that the text of the bill appear in its entirety following my remarks.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2434

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Cigarette Smoking Public Service Announcements Act of 1986".

FINDINGS

SEC. 2. The Congress finds that—

(1) many cigarette manufacturers have produced brands of cigarettes and cigarette advertising specifically directed toward women;

(2) lung cancer caused by cigarette smoking is the leading cause of death from cancer among women;

(3) if current trends continue, more than one out of every thirty-three women will die from lung cancer caused by cigarette smoking;

(4) cigarette smoking results in special health risks for women taking birth control pills; and

(5) cigarette smoking by pregnant women results in health risks for their unborn children.

PREPARATION OF PUBLIC SERVICE ANNOUNCEMENTS

SEC. 3. Section 503 of the Public Health Service Act is amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary, acting through the Institute and in consultation with the Director of the Office on Smoking and Health, shall prepare for distribution announcements for television to educate the public, particularly women, concerning the dangers resulting from cigarette smoking by women. In the preparation of such announcements, the Secretary shall, to the extent feasible, use appropriate private organizations and business concerns.

"(2) Of the amount appropriated under section 517 for any fiscal year, $1,000,000 shall be available to carry out paragraph (1) for such fiscal year.".

(b) Section 517 of such Act is amended by inserting "section 503(e) and" before "this subpart".

● Mr. BRADLEY. Mr. President, tobacco is the single biggest health hazard facing this country. We all know that the costs of tobacco, in terms of dollars and lives, are large, but we are now beginning to realize the special consequences of smoking for women. Thirty years ago, lung cancer was considered a man's disease, but smoking is now taking its toll on women. This year, lung cancer surpassed breast cancer as the leading cancer killer. If current trends continue, more than 1 out of 33 women will die from lung cancer caused by cigarette smoking.

And the risks do not end with cancer, Mr. President. Cigarette smoking has special health consequences for women. Women who smoke are 25 percent less fertile than nonsmokers. And a smoker's chance of miscarriage is vastly greater than for a nonsmoker. In addition, the newborns of smokers have a higher incidence of low birth weight, which is associated with a variety of serious medical problems.

Mr. President, in an effort to increase sales, tobacco manufacturers are increasingly targeting their cigarette ads to women. And they are succeeding. In the 1950's over half of men and less than a quarter of women were smokers. Now, about a third of both men and women smoke. I guess this is what the tobacco manufacturers mean when they say "You have come a long way, baby."

To counter these trends, we need to do whatever we can at the Federal level to dissuade people from smoking. And that is why I recently introduced legislation to deny tobacco manufacturers their tax deduction for tobacco advertising. But in addition to this, we need to educate women to the vary real dangers of smoking.

And it is to this end, Mr. President, that I join with my colleague from Utah [Mr. HATCH] in introducing the Cigarette Smoking Public Service Announcements Act of 1986. This bill directs the Secretary of HHS to develop public service announcements to be shown on television that address the unique health risks faced by women who smoke. Women need to realize the dangers of smoking—for themselves and their children.

Thirty years ago, the debate was over whether tobacco consumption represented a serious health hazard. Today, everyone agrees—everyone, that is, except the tobacco manufacturers—that tobacco is a killer. The debate has turned to how to further discourage the use of tobacco. This bill is one small step in that direction.●

● Mr. KENNEDY. Mr. President, I wish to introduce the Cigarette Smoking Public Service Announcement Act of 1986.

Cigarette smoking has been determined by the Surgeon General to be the most preventable cause of disease and death in the United States. It is the major cause of lung cancer and is associated with heart disease, periferal vascular disease, chronic bronchitis, emphysema and cancers of the oral cavity, esophagus, pancreas, and bladder. Each year over 300,000 Americans die of smoking related deaths and societal costs have been estimated to exceed $65 billion for health care expenses and lost productivity.

Subsequent to the Surgeon General's Report on Smoking and Health in 1964, a major decline in cigarette smoking has been seen. This report effectively promoted many successful prevention programs and catalyzed efforts to mandate warning labels and to limit broadcast advertising. A close look at this decline, however, shows a startling disparity between the smoking habits of men and women. While the percentage of regular adult male smokers has dropped from 50 to 33 percent. Females have only shown a modest decrease of 33 to 28 percent. Furthermore, in the 20- to 24-year-old female population smoking has actually increased in recent years and equals that of similarly aged males, 38 percent.

This disturbing trend of smoking in females—especially young women—is of particular importance. Lung cancer has now replaced breast cancer as the leading cause of cancer death in women, certainly a dubious distinction. In addition, apart from the diseases previously noted, cigarette smoking during pregnancy is associated with retarded fetal growth and an increased risk for spontaneous abortion and prenatal death. Even slight impairment of growth and development in childhood has been noted. Finally, use of the birth control pill can intensify certain smoking related health risks.

In view of the above, it is important to target women in media efforts to educate the public concerning the health hazards of smoking. The legislation introduced today recognizes this and can play a significant role in reducing smoking among women, especially pregnant women. I urge my colleagues to support us in this vital effort.●

By Mr. WILSON (for himself and Mr. LAUTENBERG):

S. 2435. A bill to improve international intellectual property protection, to improve foreign market access for U.S. companies that rely on intellectual property protection, and for other purposes; to the Committee on Finance.

INTERNATIONAL INTELLECTUAL PROPERTY AND MARKET ACCESS ACT

● Mr. WILSON. Mr. President, there appears to be a consensus that the three greatest national economic problems we are facing are the budget deficit, the trade deficit, and an unwieldy and unworkable tax system. It is therefore not surprising that each of these matters have recently been, or

soon will be, addressed by both Houses of the Congress.

This week, the Finance Committee begins a series of hearings on what Congress might do to counter the unfair practices of foreign countries with which we engage in trade—our so-called trading partners.

The focus of these hearings is on the bipartisan omnibus trade bill that was introduced last year. I am proud to be an original cosponsor of that bill, for it is primarily aimed toward creating expanded market opportunities for U.S. companies with goods and services to sell.

I am pleased that the committee is devoting one of its hearings to the problems of intellectual property protection and market access. S. 1860 contains a title specifically directed toward one aspect of the problem: The importation into the United States of goods that infringe the rights of domestic patent holders. While this title, separately introduced as S. 1869, is urgently needed—indeed, the administration included a similar provision in its recent intellectual property proposal—we ultimately need to provide a comprehensive approach to the problems faced by holders of intellectual property rights.

For this reason, I am introducing the International Intellectual Property Protection and Market Access Act of 1986. Using a little poetic license, I refer to it as the IPMA.

Mr. President, we can no longer allow foreign interests to unfairly undermine the ability of U.S. companies to do business both here and abroad. Through a combination of intellectual property piracy and protectionism, we are losing billions of dollars per year to foreign charlatans and thieves.

In the area of intellectual property protection, plainly stated, criminals around the world are costing American companies billions of dollars by cranking out millions of unauthorized copies of U.S. records and tapes, movies, books, toys, computer programs, as well as by expropriating patents and process patents, developed at great expense by U.S. companies, to make bootleg pharmaceuticals and chemicals.

What makes this illegal activity all the more outrageous is that it is often protected by governments we consider friendly to the United States. Indeed, in many cases we have provided special trade benefits in order to help them develop their economies.

Private and U.S. governmental studies have estimated that the cost of piracy to U.S. industries this year will exceed $3 billion, and perhaps be as high as $20 billion. That is somewhere between 2 percent and 13 percent of last years trade deficit.

Officially protected piracy is as much an unfair trading practice as are foreign subsidies and closed markets. Indeed, it is of little help to a U.S. company if it is granted access to a market to sell its copyrighted, patented, or trademarked goods, but then finds that the host government is allowing a flourishing market in illegal copies. Of course the pirated goods will be sold for less, for there is no need to make payments to an artist, designer, or scientist, or the company that paid for its original production and promotion.

With this in mind, last year with the majority leader, I traveled to two of the world's piracy centers. With a justified lack of tact, I told a meeting of the Taiwanese cabinet that it had the dubious distinction of being one of the piracy capitals of the world. They responded that they are trying to clean up their act, and preliminary reports suggest that they are—if a bit slowly.

Korea has not done so well. As a result, 11 of my Senate colleagues joined me in calling on United States Trade Representative Clayton Yeutter to end certain trade benefits to Korea unless it makes significant progress by the end of this year. Korea also has pending against it an administration-initiated action, brought under section 301 of the Trade Act of 1974, for its lack of intellectual property protection. And, if it does not greatly change the present system, it will likely lose its GSP designation, either by administration action under the GSP law—or, if necessary, by the Congress.

Unfortunately, these two countries represent only the proverbial tip of the iceberg. Singapore, Indonesia, Brazil, and others have booming piracy businesses, often with the involvement of present and former government officials that makes Tammany Hall look like a class picnic.

As I learned at a recent hearing of the Joint Economic Committee Subcommittee on Trade, Productivity, and Growth which I chaired in Los Angeles, Panama has allowed a company headed by former senior government officials to use intercepted United States television shows on its cable system. And even our friends to the north allow retransmission of U.S. TV signals without compensation to U.S. copyright holders.

I find it more than ironic that while Canada invokes the nonsensical phrase "cultural sovereignty" to force divestiture of United States printing interests and to prevent other United States businesses from operating within its borders, it condones the theft of our television shows for the benefit of Canadian audiences. The bottom line seems to be that the Canadians will admit our culture across its borders as long as they do not have to pay for it.

Mr. President, while the theft of broadcast signals by the Canadians is evidence of its disdain for the rights of copyright holders, its investment policies are an impediment to the marketing efforts of our industries that depend on intellectual property protection. And in this arena of unfair trading practices, Canada is not alone.

Not all forms of intellectual property are excluded by countries simply because they constitute intellectual property. For example, trademarked personal computers are not excluded from Korea because they are trademarked, but because Korea excludes all personal computers. However, Korea and other countries around the world do place unreasonable nontariff barriers around their markets designed to exclude such items as movies, books, records, patent drugs, and chemicals. The barriers come in various forms, from mandatory licensing agreements, royalty ceilings, joint production requirements, to straight quotas.

Mr. President, my bill would address the broad array of problems faced by companies that depend on intellectual property protection: From semiconductor manufacturers to book publishers, from chemical producers to filmmakers, and from pharmaceutical companies to recording artists.

While I will include at the end of my statement a full section-by-section analysis of my bill, I want to briefly outline what it contains.

Title I addresses the problems of intellectual property protection and title II is designed to aid the export of copyrighted and trademarked goods. Each establishes a similar mechanism designed first to identify priority problems. Negotiations with offending countries are then required. Finally, if after 2 years a settlement cannot be reached, the President is required to take retaliatory action.

Title III and title IV augment existing provisions aimed at intellectual property protection and market access contained in the Generalized System of Preferences and Caribbean Basin Initiative laws. Presently, the President must consider piracy and market access when deciding whether or not to designate a county as eligible for benefits under these concessionary trade laws. There is no mandate for him to revoke benefits. Furthermore, under CBI, the law only allows the President to revoke all benefits from offending countries; He is not given the ability to dole out punishments that are proportionate to the offense, thereby making sanctions less likely. While some countries are deserving of total removal from CBI, this bill would allow for less than complete termination of benefits for others depending on the severity of their actions. And for both CBI and GSP, the bill requires a cut in benefits.

Title V establishes a new Office of Enforcement within the Office of the U.S. Trade Representative. This office

is charged with coordinating our negotiating and retaliation initiatives taken pursuant to section 301 of the Trade Act of 1974 and the provisions of this bill.

Finally, in order to provide a comprehensive approach to the trade problems surrounding intellectual property, title VI incorporates changes to section 337 of the Tariff Act of 1930 as contained in S. 1869, which was introduced by Senator LAUTENBERG, Senator ROTH, myself, and others.

Mr. President, I ask unanimous consent that the text of the bill, and the accompanying section-by-section analysis, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2435

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This act may be cited as the "International Intellectual Property Protection and Market Access Act of 1986."

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) international protection of intellectual property rights is vital to the international competitiveness of the United States and the lack of such protection and enforcement leads to trade distortions and loss of export markets;

(2) United States companies that rely on intellectual property protection are among the most advanced and competitive in the world;

(3) claims by foreign countries of "cultural sovereignty" are wholly inadequate to justify restrictions on trade;

(4) existing international agreements and institutions established to protect intellectual property rights and promote open international trade do not adequately protect the interests of the United States; and

(5) foreign barriers, including restrictions and conditions on investment, licensing, and various other regulatory restrictions on business operations, seriously impede the ability of United States companies that rely on intellectual property protection to operate overseas thereby harming the economic interests of the United States.

(b) PURPOSES.—The purposes of the Act are—

(1) to recognize that adequate protection of intellectual property, and fair and equitable market access for United States companies that rely on intellectual property protection, are major elements of United States foreign economic policy that have significant commercial importance;

(2) to provide for the development, with appropriate consultations, of an overall strategy to improve the protection of United States intellectual property abroad, and to foster open international markets for United States companies that rely on intellectual property protection, which will include continued and strengthened unilateral, bilateral, and multilateral efforts and will use all appropriate instruments to achieve the objectives set forth in this Act;

(3) to recognize the importance of using all appropriate multilateral institutions to improve the substantive norms and standards for intellectual property protection;

(4) to foster adequate and effective protection of intellectual property rights of United States persons; and

(5) to eliminate the broad array of unfair and discriminatory foreign trade practices now imposed on United States companies that rely on intellectual property protection.

TITLE I—ACTIONS TO INCREASE INTERNATIONAL INTELLECTUAL PROPERTY PROTECTION

SECTION 101. INVESTIGATIONS AND FINDINGS.

(a) ANALYSIS OF BARRIERS AND EXTENT OF MARKET ACCESS.—The Trade Representative shall, within three months after issuing the annual report to Congress made pursuant to section 181 of the Trade Act of 1974, publish in the *Federal Register*—

(1) a list of all foreign countries and instrumentalities, based upon the identification and analysis of foreign trade barriers conducted pursuant to section 181, that deny adequate and effective protection of intellectual property rights to United States persons; and

(2) a list of those countries listed pursuant to paragraph (1) that are identified by the Trade Representative as priority foreign countries.

(b) In making the identification of priority foreign countries under subsection (a), the Trade Representative shall take into account the following—

(1) the identification and analysis of acts, policies, and practices which constitute denial of adequate and effective intellectual property protection, and the estimate of the trade-distorting impact on United States commerce of such acts, policies, or practices contained in the annual report required under section 181 of the Trade Act of 1974;

(2) the potential size of markets for the relevant United States products and services; and

(3) the onerous nature and significance of acts, policies, or practices that deny fair and equitable market access to United States companies that rely upon intellectual property protection.

SECTION 102. NEGOTIATIONS TO ESTABLISH ADEQUATE AND EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS.

(a) INITIATION OF NEGOTIATIONS.—Upon identification of priority foreign countries under section 101(a), the President shall enter into negotiations with such priority foreign countries to establish adequate and effective protection of intellectual property rights for United States persons in those priority foreign countries.

(b) ADDITIONAL AUTHORITY.—Whenever the President determines that any existing intellectual property protections of any foreign country are inadequate and adversely affect the international competitiveness of United States persons and that the purposes of this Chapter will be promoted thereby, the President after enactment of this Act may enter into agreements with foreign countries or instrumentalities to provide for the harmonization, reduction, elimination or prohibition of restrictions, barriers, fees or other distortions of international trade and which provide adequate and effective protection of intellectual property.

(c) APPLICATION OF AGREEMENT BENEFIT.—Notwithstanding any other provision of law, any agreement entered into under this section may provide that the benefits and obligations of such agreement apply solely to the parties to such agreement. The President shall take into account any actions which may be necessary to reconcile such treatment with United States international obligations.

(d) COMPENSATION AUTHORITY.—If the President has taken action under section 103 with respect to any foreign country, the President may enter into trade agreements with such foreign country for the purpose of granting new concessions as compensation for such actions taken by the President in order to maintain the general level of reciprocal and mutually advantageous concessions.

(e) NEGOTIATING OBJECTIVES.—The objectives of negotiations conducted pursuant to subsections (a) and (ab) shall be—

(1) to improve the protection of intellectual property by trading partners of the United States;

(2) to develop internationally agreed rules, including dispute settlement procedures, which:

(A) are consistent with the commercial and intellectual property policies of the United States;

(B) will supplement, if necessary, the rules and approaches already found in the appropriate international intellectual property conventions; and

(C) will improve the protection afforded to U.S. intellectual property abroad; and

(3) to press for early conclusion of the Anti-Counterfeiting Code on trademarks and for concurrent development and enforcement of substantive norms and standards for the protection of all forms of intellectual property.

(f) EXCLUSION FROM NEGOTIATIONS.—Upon consultation with interested United States persons, the President may exclude a country from negotiations under subsection (a) and from the remedial provisions under section 103 upon a finding, to be published in the *Federal Register*, that such negotiations would be unlikely to significantly advance, or would be detrimental to, the economic interests of the United States.

(g) Any agreement entered into under this section must be submitted to the Congress for approval.

SECTION 103. REMEDIES

(a) If the United States is unable to enter into an agreement, pursuant to negotiations conducted according to section 102, with any priority foreign country, the President shall enter into consultations as required under section 104(b) and take no later than two years after designation of such priority foreign country, including but not limited to, any of the following actions to fully achieve the objectives of this Act:

(1) terminate, withdraw, or suspend any portion of any trade agreement entered into with such foreign country or instrumentality under—

(A) the Trade Act of 1974;

(B) section 201 of the Trade Expansion Act of 1962; or

(C) section 350 of the Tariff Act of 1930;

(2) proclaim an increase in, or the imposition of, any duty on any article imported from such foreign country or instrumentality;

(3) proclaim a tariff-rate quota on any article imported from such foreign country or instrumentality;

(4) proclaim the modification or imposition of any quantitative restriction on the importation of any article from such foreign country or instrumentality;

(5) suspend, in whole or in part, benefits accorded articles from such foreign countries or instrumentalities under title V of

the Trade Act of 1974 (19 U.S.C. 2461, et seq.); and

(6) take any other action pursuant to subsection (b) or (c) of section 301 of the Trade Act of 1974 with respect to any product or service of such foreign country or instrumentality.

(b) The President may exercise his authority under this section on a non-discriminatory basis or solely against the foreign country or instrumentality involved.

(c) In implementing this section, the President shall impose trade measures described in subsection (a) that have an economic impact substantially equivalent to the lost revenues of United States companies resulting from the lack of adequate and effective intellectual property protection in the foreign country or instrumentality in question.

(d) In implementing this section, the President may defer action for six months upon providing written certification to the Congress that negotiations are making substantial progress.

SECTION 104. CONSULTATIONS.

CONSULTATIONS WITH CONGRESS AND THE PRIVATE SECTOR.—For purposes of conducting negotiations under section 102, and determining the appropriate actions to be taken under section 103, the President shall provide an opportunity for the presentation of views by interested parties, including interested members of Congress, appropriate committees of the Congress, and the committees established pursuant to section 135 of the Trade Act of 1974, and shall keep such parties currently informed with respect to—

(1) the negotiating priorities and objectives for each country involved;

(2) the assessment of negotiating prospects, both bilateral and multilateral; and

(3) any United States concessions which might be included in negotiations to achieve the objectives described in section 102.

SECTION 105. DEFINITION.

"Adequate and effective protection of intellectual property" means that a country provides adequate and effective means under its law for foreign persons to secure, to exercise and to enforce exclusive rights in all forms of intellectual property, including patents, trademarks, copyrights, mask works, trade secrets and proprietary technical data.

TITLE II—ACTIONS TO OPEN FOREIGN MARKETS

SECTION 201. INVESTIGATIONS AND FINDINGS.

(a) ANALYSIS OF BARRIERS AND EXTENT OF MARKET ACCESS.—

The Trade Representative shall, within three months after issuing the annual report to Congress made pursuant to section 181 of the Trade Act of 1974, publish in the *Federal Register*—

(1) a list of all foreign countries and instrumentalities, based upon the identification and analysis of foreign trade barriers conducted pursuant to section 181, that deny fair and equitable market access to United States companies that rely on intellectual property protection; and

(2) a list of those countries listed pursuant to paragraph (1) that are identified by the Trade Representative as priority foreign countries.

(b) In making the indentification of priority foreign countries under subsection (a) the Trade Representative shall take into account the following—

(1) the identification and analysis of acts, policies, and practices which constitute significant barriers to, or distortion of, United States property protected by patents and copyrights exported or licensed by United States persons, and the estimate of the trade-distorting impact on United States commerce of such acts, policies, or practices contained in the annual report required under section 181 of the Trade Act of 1974;

(2) the potential size of markets for United States companies that rely on intellectual property protection; and

(3) the onerous nature and significance of acts, policies, or practices that deny fair and equitable market access to United States companies that rely on intellectual property protection.

(b) FACTORS TO BE TAKEN INTO ACCOUNT.—In making the findings required by subsection (a), the United States Trade Representative shall take into account the following factors—

(1) whether such foreign countries or instrumentalities place any restrictions or conditions upon investments by, or the establishment of, United States companies that rely upon intellectual property protection in their territories;

(2) whether such foreign countries or instrumentalities place licensing or certification restrictions upon United States companies that rely upon intellectual property protection, that inhibit the ability of these companies to function freely in the markets of those countries; and

(3) whether United States companies that rely upon intellectual property protection suffer from discriminatory or monopolistic practices of the private companies or other organizations of such foreign countries or instrumentalities.

SECTION 202. NEGOTIATIONS TO OPEN FOREIGN MARKETS.

(a) INITIATION OF NEGOTIATIONS.—Upon identification of priority foreign countries under section 201(a), the President shall enter into negotiations with such priority foreign countries in order to enter into agreements with such countries setting specific terms to provide United States companies that rely upon intellectual property protection with fair and equitable market access in such countries.

(b) ADDITIONAL AUTHORITY.—Beginning on the date of the enactment of this Act, the President may enter into trade agreements which meet the objectives described in this section with foreign countries or instrumentalities which provide for the harmonization, reduction, and elimination or prohibition of restrictions, barriers, fees, or other distortions of international trade.

(c) APPLICATION OF AGREEMENT BENEFIT.—Notwithstanding any other provision of law, any agreement entered into under this section may provide that the benefits and obligations of such agreement apply solely to the parties to such agreement. The President shall take into account any actions which may be necessary to reconcile such treatment with United States international obligations.

(d) COMPENSATION AUTHORITY.—If the President has taken action under section 203 with respect to any foreign country, the President may enter into trade agreements with such foreign country for the purpose of granting new concessions as compensation for such actions taken by the President in order to maintain the general level of reciprocal and mutually advantageous concessions.

(e) NEGOTIATING OBJECTIVES.—The general objectives of negotiations conducted pursuant to subsection (a) shall be—

(1) to obtain multilateral or bilateral agreements that provide to United States companies that rely upon intellectual property protection fair and equitable market access in all substantial foreign markets; and

(2) to prevent foreign barriers and restrictions on United States companies that rely upon intellectual property protection from causing continued harm to those companies.

(f) EXCLUSION FROM NEGOTIATIONS.—Upon consultation with interested United States companies, the Trade Representative may exclude a specific sector and/or country from negotiations under subsection (a) and from the remedial provisions under section 203 upon a finding, to be published in the *Federal Register*, that such negotiations would be detrimental to the interests of United States companies that rely upon intellectual property protection.

(g) Any agreement entered into under this section must be submitted to the Congress for approval.

SECTION 203. REMEDIES.

(a) If the United States Trade Representative is unable to enter into an agreement, pursuant to negotiations conducted according to section 202, with any priority foreign country, the President shall take no later than two years after designation of such priority foreign country, including but not limited to, any of the following actions to fully achieve the objectives of this Act:

(1) terminate, withdraw, or suspend any portion of any trade agreement entered into with such foreign country or instrumentality under—

(A) the Trade Act of 1974;

(B) section 201 of the Trade Expansion Act of 1962; or

(C) section 350 of the Tariff Act of 1930;

(2) proclaim an increase in, or the imposition of, any duty on any article imported from such foreign country or instrumentality;

(3) proclaim a tariff-rate quota on any article imported from such foreign country or instrumentality;

(4) proclaim the modification or imposition of any quantitative restriction on the importation of any article from such foreign country or instrumentality;

(5) suspend, in whole or in part, benefits accorded articles from such foreign countries or instrumentalities under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.);

(6) take any other action pursuant to subsection (b) or (c) of section 301 of the Trade Act of 1974 with respect to any product or service of such foreign country or instrumentality;

(b) The President may exercise his authority under this section on a non-discriminatory basis or solely against the foreign country or instrumentality involved.

(c) In implementing this section, the President shall impose trade measures described in subsection (a) that have an economic impact substantially equivalent to the lost revenues of United States companies that rely upon intellectual property protection caused by the lack of fair and equitable market access in the foreign country or instrumentality in question.

(d) In implementing this section, the President may defer action for six months upon providing written certification to the Congress that negotiations with the country in question are making substantial progress.

SECTION 204. CONSULTATIONS.

CONSULTATIONS WITH CONGRESS AND THE PRIVATE SECTOR.—For purposes of conducting negotiations under section 202, and determining the appropriate actions to be taken under section 203, the President shall provide an opportunity for the presentation of views by interested parties, including interested members of Congress, appropriate committees of the Congress, and the committees established pursuant to section 135 of the Trade Act of 1974, and shall keep such parties currently informed with respect to—

(1) the negotiating priorities and objectives for each country involved;

(2) the assessment of negotiating prospects, both bilateral and multilateral; and

(3) any United States concessions which might be included in negotiations to achieve the objectives described in section 202.

SECTION 205. DEFINITION.

In general, "companies that rely upon intellectual property protection" are defined as companies, or divisions or subsidiaries of companies, whose principal line of business involves creation, production or licensing of literary or artistic works which are copyrighted or which manufacture products that are patented or for which there are process patents.

TITLE III—GENERALIZED SYSTEM OF PREFERENCES

SECTION 301. Section 502 of the Trade Act of 1974, as amended, is amended by adding at the end thereof the following new subsection:

"(e) No later than twelve months after enactment of this subsection, the President shall terminate benefits previously extended to a beneficiary developing country under this section if such country is identified in the 1985 Report to Congress pursuant to section 181 of the Trade Act of 1974 as having adequate protection of intellectual property or inadequate market access unless the President certifies to the Congress, and continues to certify at twelve month intervals, that such country has taken substantial action toward providing adequate and effective intellectual property protection and enforcement and fair and equitable market access for United States persons.".

SECTION 302. Subsection (c) of section 503 of the Trade Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) the President may not designate as, or shall remove from designation, any eligible article under this section which has been determined by any Federal or State court or Federal agency of appropriate jurisdiction to infringe any patent, copyright, trademark, mask work or trade secret interest.".

TITLE IV—CARIBBEAN BASIN ECONOMIC RECOVERY ACT

SECTION 401. The Caribbean Basin Economic Recovery Act is amended—

(a) by designating section 218 (19 U.S.C. 2706) as section 219 (19 U.S.C. 2707); and

(b) by inserting the following new section (19 U.S.C. 2706):

"SECTION 218. MARKET ACCESS AND INTELLECTUAL PROPERTY PROTECTION.

"(a) The Trade Representative shall exclude from eligibility articles which would otherwise be eligible under this chapter, imported from beneficiary countries that do not provide adequate and effective intellectual property protection or fair and equitable market access to United States persons, unless the President certifies to the Congress, and continues to certify at twelve month intervals, that such country has taken substantial action to provide adequate and effective intellectual property protection and enforcement and fair and equitable market access for United States persons.

"(b) The value of benefits withdrawn by the Trade Representative under subsection (a) shall have an economic impact substantially equivalent to the lost revenues of United States persons resulting from the denial of adequate and effective intellectual property protection or fair and equitable market access.".

TITLE V—IMPROVEMENT OF ENFORCEMENT OF UNITED STATES RIGHTS

SECTION 501. ESTABLISHMENT OF ENFORCEMENT OFFICE.

An Office of Enforcement shall be established within the Office of the United States Trade Representative to administer section 301 of the Trade Act of 1974 and the provisions of this Act.

SECTION 502. AUTHORIZATION FOR ENFORCEMENT OFFICE.

Such funds necessary for the operation of the Office of Enforcement are authorized to be appropriated by the Congress as are necessary to carry out the purposes of this Act.

TITLE VI—UNFAIR PRACTICES IN IMPORT TRADE

SEC. 601. Subsection (a) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), is amended—

(a) by striking out "(a) Unfair" and inserting in lieu thereof "(a)(1) Unfair",

(b) by striking out "efficiently and economically operated",

(c) by striking out "prevent" and inserting in lieu thereof "impair or prevent", and

(d) by adding at the end thereof the following new paragraph:

"(2) For purposes of this section, the following acts in the importation of articles into the United States or in their sale are declared to be unfair and to have the effect or tendency to destroy or substantially injure an industry or to impair the establishment of an industry:

"(A) Unauthorized importation of an article which infringes a valid United States patent or the unauthorized sale of such an imported article.

"(B) Unauthorized importation of an article which—

"(i) was made, produced, processed, or mined under, or by means of, a process covered by a valid United States patent, and

"(ii) if made, produced, processed, or mined in the United States, would infringe a valid United States patent,

or the unauthorized sale of such an imported article.

"(C) Unauthorized importation of an article which infringes a valid United States copyright or the unauthorized sale of such an imported article.

"(D) Importation of an article which infringes a valid United States trademark, or the sale of such an imported article, if the manufacture or production of such imported article was unauthorized.

"(E) Unauthorized importation of an article which infringes a valid United States maskwork or the unauthorized sale of such an imported article.

"(F) Unauthorized importation of an article which infringes a valid trade secret in the United States or the unauthorized sale of such an imported article.".

SEC. 602. Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) is amended—

(a) by striking out "subsection (d) or (e)" in subsection (c) and inserting in lieu thereof "subsection (d), (e), (f), or (g)",

(b) by striking out "subsection (d), (e), or (f)" in subsection (c) and inserting in lieu thereof "subsection (d), (e), (f), (g), or (h)",

(c) by striking out "subsections (d), (e), and (f)" in subsection (c) and inserting in lieu thereof "subsection (d), (e), (f), (g), or (h)",

(d) by striking out "If" in the first sentence of subsection (e) and inserting in lieu thereof "(1) If",

(e) by adding at the end of subsection (e) the following new paragraph:

"(2) Any person may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the date that is 90 days after the date that on which such petition is filed with the Commission. The Commission may require the petitioner to post a bond as a prerequisite to the issuance of an order under this subsection.",

(f) by striking out "In lieu of" in subsection (f)(1) and inserting in lieu thereof "In addition to, or in lieu of,",

(g) by inserting "twice" after "of $10,000 or" in subsection (f)(2),

(h) by redesignating subsections (g), (h), (i), and (j) as subsections (i), (j), (k), and (l), respectively,

(i) by inserting after subsection (f) the following new subsections:

"(g) FORFEITURE.—In addition to taking action under subsection (d) or (e), the Commission may issue an order providing that an article imported in violation of the provisions of this section be seized and forfeited to the United States. The Commission shall notify the Secretary of the Treasury of any order issued under this subsection and, upon receipt of such notice, the Secretary shall enforce such order in accordance with the provisions of this Act.

"(h) DEFAULT.—If—

"(1) a complaint is filed against a person under this section,

"(2) such complaint and a notice of investigation are served on such person,

"(3) such person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice,

"(4) such person fails to show good cause why such person should not be found in default, and

"(5) the facts alleged in the petition establish a violation of the provisions of this section, and

"(6) the complainant seeks relief affecting solely such person the Commission shall presume the facts alleged in the complaint and shall, upon request, issue relief under this section affecting solely such person, unless, after considering the effect of such an order of relief upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such an order or relief should not be issued.",

(j) by striking out "subsection (d), (e), or (f)" each place it appears in subsection (i), as redesignated by paragraph (8) of this subsection, and inserting in lieu thereof "subsection (d), (e), (f), (g), or (h)",

(k) by inserting "and no seizure shall be made of any article under subsection (g) until such determination becomes final if

such a bond is posted" after "becomes final" in subsection (i)(3), as so redesignated,

(l) by striking out "and (g)" in subsection (j), as so redesignated, and inserting in lieu thereof "and (i)",

(m) by striking out "notifies" in subsection (j), as so redesignated, and inserting in lieu thereof ", or order to seize, notifies",

(n) by striking out "Except" in subsection (j), as so redesignated, and inserting in lieu thereof "(1) Except",

(o) by adding at the end of subsection (j), as so redesignated, the following new paragraph:

"(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or recission of an order under subsection (d), (e), (f), (g), or (h)—

"(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner, and

"(B) relief may be granted by the Commission with respect to such petition only on the basis of new evidence or evidence that could not have been presented at the prior proceeding.",

(p) by striking out "subsection (d), (e), or (f)" in subsection (k), as so redesignated, and inserting in lieu thereof "subsection (d), (e), (f), (g), or (h)", and

(q) by striking out "patent" each place it appears in subsection (k) and inserting in lieu thereof "patent, copyright, or trademark".

SEC. 603. The Act of July 2, 1940 (54 Stat. 724, chapter 515; 19 U.S.C. 1337a) is hereby repealed.

INTERNATIONAL INTELLECTUAL PROPERTY PROTECTION AND MARKET ACCESS ACT OF 1986
SECTION-BY-SECTION SUMMARY

SEC. 1. SHORT TITLE.

SEC. 2. FINDINGS AND PURPOSE.

This section states Congressional findings that international protections of intellectual property rights, vital to U.S. competitiveness, are inadequate to protect U.S. economic interests; and that foreign trade and investment barriers seriously impede the ability of United States companies that rely on intellectual property protection to operate overseas resulting in a substantial loss of export markets.

The purpose of the legislation is to provide negotiating authority and to establish procedures to improve intellectual property protection abroad and to provide fair and equitable market access for U.S. companies relying on intellectual property protection.

TITLE I—ACTIONS TO INCREASE INTERNATIONAL INTELLECTUAL PROPERTY PROTECTION

This Title is intended to improve international intellectual property protection. It establishes a process in which the U.S. Trade Representative investigates whether foreign countries provide adequate and effective protection of intellectual property rights; USTR then negotiates with designated "priority foreign countries" that deny such intellectual property protection to Americans; and it requires a response by the President against "priority foreign countries" that do not agree to provide such intellectual property protection within two years.

Section 101. INVESTIGATIONS AND FINDINGS.

This section requires the United States Trade Representative ("USTR") to publish an annual list (based upon the annual report by USTR already required under the Trade Act of 1974) of those countries that deny adequate and effective intellectual property protection (*i.e.* patents, copyrights, trademarks and mask works) to U.S. companies. USTR is also directed to select "priority foreign countries" from this list based upon the potential export market in these countries and the onerous nature of their policies.

SEC. 102. NEGOTIATIONS TO ESTABLISH ADEQUATE AND EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS.

This section directs the President to enter into negotiations with the priority foreign countries to obtain greater intellectual property protection for U.S. companies. The President is granted additional authority to enter into similar agreements with other countries whenever he determines that their existing protections are inadequate and adversely affect U.S. competitiveness. The objectives of the negotiations are to improve intellectual property protection and to develop international rules for the protection of all forms of intellectual property. The President is granted the right to exclude a country or sector from negotiations after a public finding that such negotiations are unlikely to advance, or would be detrimental to, U.S. economc interests.

SEC. 103. REMEDIES.

If the USTR is unable to reach agreement with a priority foreign country within two years, the President must take some action, which may include but is not limited to the following:

(1) terminate, withdraw, or suspend trade agreements previously entered into;

(2) increase or impose a duty on any article imported from the foreign country;

(3) proclaim a tariff-rate quota;

(4) modify or impose quotas;

(5) suspend benefits under the Generalized System of Preferences; or

(6) take any other action under Section 301(b) or (c) of the 1974 Trade Act.

Presidential action may be nondiscriminatory or solely against the offending country. The President is required to impose trade measures that have an economic impact substantially equivalent to the lost revenues of U.S. companies caused by lack of intellectual property protection. The President may defer action for six months after certifying to Congress that substantial progress is being made in the negotiations.

SEC. 104. CONSULTATIONS.

This section requires the President to consult with interested members of Congress, the appropriate Congressional committees and other interested parties.

TITLE II—ACTIONS TO OPEN FOREIGN MARKETS

This title is intended to improve foreign market access for U.S. companies that rely upon intellectual property protection. The U.S. Trade Representative is directed to investigate foreign practices that deny fair and equitable market access to U.S. persons that rely upon intellectual property protection. USTR then negotiates with the "priority foreign countries" that deny such market access; and the President must respond.

SEC. 201. INVESTIGATIONS AND FINDINGS.

This section requires USTR to publish an annual list (based upon the annual report by USTR already required under the Trade Act of 1974) of these countries that deny fair and equitable market access (*e.g.*, through investment restrictions and trade barriers) to U.S. companies. USTR is also directed to select "priority foreign countries" from this list based upon the potential export market in these countries and the onerous nature of their policies.

SEC. 202. NEGOTIAITONS TO OPEN FOREIGN MARKETS.

This section directs the President to enter into negotiations with the priority foreign countries in order to reach specific agreements which will provide fair and equitable market access for U.S. companies that rely upon intellectual property protection. The President is given authority to enter into trade agreements with foreign countries to eliminate such trade barriers. Upon consultation, the USTR may exclude a specific sector or country from the negotiations upon published findings that such remedies would be detrimental to the interests of U.S. persons that rely upon intellectual property protection.

SEC. 203. REMEDIES.

If the USTR is unable to reach agreement with a priority foreign country within two years, the President must take some action, which may include but is not limited to the following:

(1) terminate, withdraw, or suspend prior trade agreements;

(2) increase or impose duties on any article imported from such foreign country;

(3) proclaim a tariff-rate quota on any article imported from such country;

(4) modify or impose quantitative restrictions;

(5) suspend benefits under the Generalized System of Preferences; or

(6) take other action pursuant to Section 301(b) or (c) of the 1974 Trade Act.

The President is granted authority to act on a nondiscriminatory basis or solely against the offending country. The President is required to impose trade measures that have an economic impact substantially equivalent to the lost revenues of U.S. companies caused by the lack of market access. The President may defer action for six months by certifying to Congress that negotiations are making substantial progress.

SEC. 204. CONSULTATIONS.

This section directs the President to consult with interested members of Congress, the appropriate Congressional committees and other interested parties.

SEC. 205.

This section defines "companies that rely upon intellectual property protection" as companies, or divisions or subsidiaries of companies, whose principal line of business involves creation, production or licensing of literary or artistic works which are copyrighted or which manufacture products that are patented or for which there are process patents.

TITLE III—GENERALIZED SYSTEM OF PREFERENCES

SECTION 301.

This Section amends the Generalized System of Preferences by adding a new subsection directing the President to terminate benefits previously extended to beneficiary developing countries if they are identified in the 1985 report under section 181 of the Trade Act of 1974 as providing inadequate intellectual property protection or inadequate market access unless the President certifies, at twelve month intervals, to Congress that such country has taken substantial action to rectify such inadequacies.

SEC. 302.

This section further amends the Generalized System of Preferences by adding a new paragraph which prohibits the President

from designating and requires removal from designation eligible articles which have been determined by any court or federal agency to infringe patent, copyright, trademark, mask work or trade secret interests.

TITLE IV—CARIBBEAN BASIN ECONOMIC RECOVERY ACT

This section amends the Caribbean Basin Initiative by creating a new section which grants USTR the right to exclude from eligibility those articles imported from beneficiary countries that provide inadequate intellectual property protection or inadequate market access to U.S. companies. USTR may defer action upon certification to the Congress that the offending country has taken substantial action to resolve such problems. This new section also provides that the value of the withdrawn benefits have an economic impact substantially equivalent to the lost revenues resulting from the denial of intellectual property protection and market access.

TITLE V—IMPROVEMENT OF ENFORCEMENT OF UNITED STATES RIGHTS

SEC. 501. ESTABLISHMENT OF ENFORCEMENT OFFICE.

This Section establishes an Office of Enforcement within the Office of the USTR to administer this Act and Section 301 of the Trade Act of 1974.

SEC. 502. AUTHORIZATION FOR ENFORCEMENT OFFICE.

This Section authorizes appropriations for the Office of Enforcement.

TITLE VI—UNFAIR PRACTICES IN IMPORT TRADE

This Section inserts the text of S. 1869 which amends Section 337 of the 1930 Tariff Act.●

● Mr. LAUTENBERG. Mr. President, I am pleased to join in introducing the International Intellectual Property Protection and Market Access Act of 1986. This legislation is designed to enhance the protection of intellectual property rights, and to gain access to markets for industries that rely upon such rights.

America's economic edge is its technology and innovation. But, if we're to enjoy the fruits of our labor—the jobs and growth that come from innovation—we need to stop the piracy of American intellectual property. I refer to U.S. patents, copyrights, trademarks, trade secrets, and semiconductor masks.

This bill would require the U.S. Trade Representative to establish negotiating priorities for increasing the level of intellectual property right protection abroad. It would force responsive action by the administration if negotiations proved unsuccessful.

Mr. President, often intellectual property owners face barriers to market access that are uniquely tailored to their industries. For example, copyright industries—motion picture producers, publishers, and the recording industry—are denied the ability to market their products on the basis of licensing requirements, barriers to distribution, and protectionist measures erected in the name of cultural sovereignty. The legislation would require the administration to make a special effort to break down these barriers to market access.

The legislation would also amend the law that ties benefits under the Generalized System of Preferences and the Caribbean Basin Initiative to intellectual property rights. It would mandate at least some restriction of benefits unless substantial improvement in protection is being secured.

The bill also includes the text of S. 1869, a bill that I introduced along with Senator ROTH, Senator WILSON, and others to reform section 227 of the Tariff Act.

Mr. President, the protection of intellectual property should be a major part of our Nation's trade policy. This legislation would help ensure that positive action is taken to ensure that Americans have the chance to market their ingenuity, their invention, and their creativity in trade around the world.

I urge my colleagues to support this legislation.●

By Mr. STEVENS (by request):

S. 2436. A bill to preserve the rights of the United States as a mortgagee under title XI of the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

PRESERVATION OF UNITED STATES MORTGAGEE RIGHTS

● Mr. STEVENS. Mr. President, I am introducing legislation which was suggested to me at a March 21 hearing before the Senate Merchant Marine Subcommittee on the Title XI Vessel Loan Guarantee Program.

The Maritime Administration [MarAd] and the National Oceanic and Atmospheric Administration [NOAA] have requested a statutory exemption from the automatic stay provisions of section 362(b) of the Bankruptcy Code. In particular, MarAd is experiencing a series of defaults which has plagued the Vessel Guarantee Program. MarAd has had to borrow roughly $900 million from the Treasury within the last year to meet its obligations. However, MarAd and NOAA are treated as general creditors when a company in default of its title XI mortgage payments files for bankruptcy. The agencies have contended that the legal impediments to lifting the automatic stay imposed on creditors by the Bankruptcy Code are affecting the administration of the guarantee program.

Last year I introduced S. 1992 and S. 1993 on behalf of the administration which would provide both agencies with relief from the automatic stay. It was suggested at the hearing that the language in both bills did not limit the relief sought to the Federal Government, but expanded it to include the entire class of secured creditors. Alternative language was offered which would narrow the scope of the proposal to provide relief from the automatic stay for NOAA and MarAd only if a title XI guarantee was involved.

The legislation I am introducing today is identical to the language offered at the hearing. It is designed to clarify the issue before the Merchant Marine Subcommittee and provide interested parties with the alternative approach to consider.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD as follows:

S 2436

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 362(b) of title 11, United States Code, is amended by substituting "; or" for the period at the end of paragraph (11) thereof and adding new paragraphs (12) and (13) thereto reading as follows:

"(12) under subsection (a) of this section, of the commencement or continuation of an action by the Secretary of Transportation to foreclose a mortgage on a vessel under the Ship Mortgage Act, 1920 (46 App. U.S.C. 861 *et seq.*), held by the Secretary under section 207 or sections 1101 through 1110 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271-1979e); or

"(13) under subsection (a) of this section, of the commencement or continuation of an action by the Secretary of Commerce to foreclose a mortgage on a vessel under the Ship Mortgage Act, 1920 (46 App. U.S.C. 861 *et seq.*), held by the Secretary under sections 1101 through 1110 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271-1279e). ".

SEC. 2. The amendments of section 362(b) set forth in section 1 above shall apply only to filings referred to in section 362(b) which are made after the effective date of this amendment.●

By Mr. BENTSEN (for himself and Mr. HEINZ):

S. 2437. A bill to remove foreign policy controls on exports to the Soviet Union of oil and gas equipment and technology; to the Committee on Banking, Housing, and Urban Affairs.

PETROLEUM EQUIPMENT EXPORT ACT

Mr. BENTSEN. Mr. President, I am pleased to be joined by my distinguished colleague from Pennsylvania [Mr. HEINZ] in introducing legislation to correct a grievous error in the application of the Export Administration Act. This bill will remove the present controls on the export of oil field equipment to the Soviet Union, except for those controls necessary for national security.

Our current policy is a classic mise of the foreign policy export controls under the Export Administration Act. We are now in exactly the kind of position that the 1985 amendments to the Export Administration Act were designed to prevent. We have restrictions on sales which no other country

in the world is imposing. As a result we are losing sales and jobs to foreign competitors without having any impact on the plans or behavior of the Soviet Union. The situation is made even worse by the fact that it comes at a time when the oil industry is in the depths of a deep, deep depression.

The futility of these controls have been documented by the Central Intelligence Agency in a study entitled "Soviet Needs for Western Petroleum Technology and Equipment." A sanitized and declassified copy of this report has been prepared and released by the CIA at my request. The report in its present form does not expose any classified U.S. information or intelligence sources. This CIA report does document the great need of the U.S.S.R. for Western petroleum technology, and more importantly the ability of the U.S.S.R. to get that technology and equipment from many non-United States sources. These non-United States sources do not have United States restrictions on sale to the U.S.S.R., and in the case of non-Cocom and Third World countries they do not even restrict sales of militarily sensitive items.

This study lists seven categories of petroleum technology where Communist bloc abilities are inadequate and where outside technology is or will be needed. Technology in all seven of these categories is available from non-U.S. sources at levels deemed by the CIA to be "adequate for most needs" or better. Further, all seven categories are available from non-Cocom European countries—countries that do not participate in or abide by the Cocom restrictions of militarily sensitive technology to the Communist bloc countries. Six of these seven categories are even available from Third World countries.

The study similarly lists 34 categories of equipment. Seventeen of these categories are available from non-Cocom countries, and 32 of the 34 available from other Cocom countries. These other Cocom countries limit exports only where they involve military sensitive technology. They do not, as we now do, restrict other sales of petroleum equipment.

Controls on the export of oil field equipment and technology to the Soviet Union were put in place by the Carter administration and have been extended by the Reagan administration. The United States has a well-deserved reputation for shooting itself in the foot, and unfortunately this administration is continuing in that tradition. The embargoes of grain and oil field equipment imposed after the Russian invasion of Afghanistan are classic examples of this problem. I strongly believe that we should not impose embargoes unless the target country is hurt worse than the United States is.

The Export Administration Act of 1985 directs that a number of factors be considered before renewing export controls. Included among those factors are the availability of the controlled items from other countries and whether the damage to the United States from the embargo exceeds the foreign policy benefit. The current controls on oil field equipment and technology clearly fail both of these tests.

Other countries can and do produce comparable equipment, and they have refused to join in this embargo. Over 2,000 different product lines of oil field equipment are produced in 38 other countries, including our NATO allies and Japan, which do not impose the export restrictions that we do.

Russia has thus been able to get the needed equipment. Worse yet, this unilateral U.S. embargo has in effect subsidized the foreign competition of major U.S. companies by giving them a major market. This has cost the United States hundreds of millions of dollars in sales and thousands of jobs, and it has also greatly damaged our image as a reliable supplier in a market where reliability is all-important.

The U.S. petroleum equipment industry is dependent on exports for about 35 percent of their annual sales. These exports have dropped from $5.3 billion in 1982 to only $3.2 billion in 1985. The U.S.S.R. is the largest petroleum equipment market outside of the United States. American oil and gas firms had about 25 percent of total Western exports to that huge market before the embargo. By 1983 they had only 0.4 percent. Had the U.S. market share only remained constant we would have had $1.8 billion in orders during 1979–83 instead of the actual $118 million. This is a loss of over 90 percent in potential sales and a loss of over 8,000 jobs.

Mr. President, my home State of Texas is the center of the world oil field equipment industry. Texas companies have borne an estimated 50 percent of these losses. However, the impact goes far beyond Texas. If we destroy the productive base of this country's oil industry we will be threatening any future hope of energy independence for this country. That is a very severe threat to our national security.

The administration's policy in this area has not only been wrong, it has been inconsistent. In September of 1983 the Commerce Department lifted restrictions on the sale of pipe-laying tractors to the Soviet Union, saying that they "do not represent high technology and are available from a number of other countries." No explanation was given as to why these tractors differ from most other oil and gas equipment, which is also freely available from other suppliers, and which is not generally considered "high technology" by anyone familiar with the industry. This embargo had cost the Caterpillar Tractor Co. its 85-percent share of the Russian market, with those orders going to a Japanese company instead. Caterpillar is just now getting back a few orders from the U.S.S.R. for this equipment.

On March 21, 1985, I wrote Secretaries Baldrige and Shultz concerning this problem. The response from the State Department said that "* * * because of our concerns that our allies not become unduly dependent on Soviet energy supplies, we do not officially promote sales of oil and gas equipment or joint venture arrangements in the energy field with the Soviets." Our allies do not share those concerns, and because of that they are making money selling oil field equipment of Russia without any competition allowed by United States companies. This is not good foreign policy or good economic policy for America.

That State Department letter further stated that "United States petroleum equipment suppliers report their reduced share of sales to the Soviet Union is due not just to instances where license applications may have delayed certain exports." Texas petroleum equipment suppliers tell me just the opposite—that licensing delays and refusals are the primary reason they are locked out of the Russian market.

The State Department letter then goes on to say, "Soviet purchasers, in many instances, give apparent preference to non-United States suppliers, pressure United States firms to make deliveries from plants abroad, and sometimes do not permit American firms to bid on oil and gas projects." This is exactly the point I am making. No amount of artful wording can hide the fact that past delays and refusals of licenses are costing the United States both sales and jobs. As a result, Russia is turning to other suppliers who do not have restrictions. Time is money in the drilling business. If a key part breaks anywhere on the globe a replacement is shipped by airplane that same day. If a government bureaucrat must issue an export license first then it does not matter whether the delay is 6 days or 6 months. The sale will be lost.

These complaints are backed up by actual examples. One United States company reported that it won a major Russian contract, and then lost it because the export license was denied. As a result 250 jobs were lost. Another United States company reports that it had 30 percent of the Russian market in its product lines, but now has none. Those sales now go to European firms, some of which are subsidiaries of United States companies.

As acknowledged by the State Department and shown in these exam-

ples, this equipment is freely available even from foreign subsidiaries of U.S. companies. There are few if any restrictions on shipment of technology to our allies. These unilateral U.S. export controls thus mean lost jobs for U.S. workers and encourage U.S. companies to move their research and production operations overseas. They also encourage foreign companies to engineer out U.S. products in favor of more assured sources of supply.

This policy is ridiculous. We should never impose export controls unless we hurt others worse than we hurt ourselves. We should never impose export controls unless other countries which produce the same products also agree to those controls. These are basic principles both of law and of common sense. The current unilateral restrictions on the sale of oilfield equipment to the Soviet Union violate both of those principles and should be lifted immediately before even more jobs and contracts are lost.

Mr. President, the current controls on the export of oilfield equipment to the U.S.S.R. are useless in terms of foreign policy impact and very damaging to a key U.S. industry that is in deep trouble. I regret the administration has forced us to take legislative action to implement what should have been a routine agency decision. However, it is vitally important to all U.S. industries that this country set and maintain a policy of not restricting exports unless it will hurt the target country worse than it hurts us. I urge my colleagues to join in passing this legislation.

● Mr. HEINZ. Mr. President, the enactment of the Export Administration Act Amendments of 1985 marked the end of one of the longest, most difficult legislative processes of recent years. The question of how we, as a nation, should monitor and control the export of goods and services is a controversial one, given the wide-ranging implications that these controls have for national security and foreign policy purposes.

The legislation passed by Congress incorporated reasonable compromises on most of the issues, but I suppose any time compromises are made, the result is likely to create some possible ambiguity and will not be as clear as one would always wish.

With regard to foreign policy exports controls, I have long been skeptical about their use to achieve policy objectives. We can and have stopped exports to countries with whom we have serious differences in order to make a statement about their policies. That may make us feel better, but others continue to supply the same equipment. The result is that foreign firms replace U.S. firms as suppliers. U.S. firms permanently lose overseas markets. Yet, the policies we oppose do not change. Frankly, without the cooperation of other countries, we gain nothing. We lose a great deal.

The case of petroleum equipment exports to the Soviet Union clearly illustrates the ineffectiveness of foreign policy controls. Even the modest change made by the administration this year, of moving oil and gas production technology from a presumption of denial policy to case-by-case review, offers U.S. suppliers little real headway. It entirely fails to address the complete ineffectiveness of this export control. The U.S. petroleum equipment industry agrues, accurately and effectively, that the foreign policy controls on their equipment have not changed Soviet human rights or foreign policies. Further, the controls do not impede Soviet energy development, given their access to the same equipment from other foreign suppliers.

Make no mistake. I support the goal being sought by the controls, namely to protest Soviet human rights abuses. But I have to wonder about the method chosen to pursue that goal when it has had no effect other than a loss of jobs and income to the United States, damage to United States firms' reputations as reliable suppliers and a dramatic decline in United States sales to the Soviet Union of nonstrategic items.

I am not suggesting national security controls on highly sophisticated petroleum equipment be removed. I am questioning the effectiveness of foreign controls in the face of foreign availability of the same equipment.

I do not know how the administration justifies renewing for another year the foreign policy control on exports to the Soviet Union of oil and gas equipment and technology, especially in light of the broad recognition within the administration that there is widespread foreign availability and that the control has caused substantial damage to the U.S. petroleum equipment and services industry.

The Commerce Department's own analysis on this equipment states:

> Foreign availability does exist for the majority of these items in the oil and gas equipment area. There are approximately 350 major U.S. and well over 60 major foreign firms producing this type of equipment. The United States is no longer the sole supplier of most types of oil and gas equipment.

Now, let's look at the foreign policy implications. These controls were originally imposed by the Carter administration in 1978 in response to the trial and conviction of two Soviet dissidents, Alexander Ginsburg and Anatoly Shcharansky, and in response to the Soviet arrest of an American journalist named Jay Profett. That is why we imposed those controls.

What has happened since then is that Mr. Ginsburg was freed and just recently Anatoly Shcharansky was freed. At no time has anybody, either in the Carter administration on whose watch Ginsburg was freed or in this administration when Shcharansky was freed, linked their being freed to the foreign policy controls that we still maintain.

So if there is no linkage, why are we continuing to impose the controls? Isn't that imposing so-called foreign policy controls without a policy?

For these reasons, I am joining Senator BENTSEN today in offering legislation to require the lifting of these controls. Their original purpose, so far as it can be determined, has disappeared, and any hope for any effectiveness of the controls is dashed by the fact that several other suppliers are willing to sell, and have been selling, to the Soviets the very same equipment. Mr. President, if we are not gaining anything by these export controls, then why are we penalizing our industries? I urge my colleagues to support this legislation.●

By Mr. HATCH:

S. 2438. A bill to extend and amend programs under the Head Start Act, and for other purposes; to the Committee on Labor and Human Resources.

HEAD START AMENDMENTS

Mr. HATCH. Mr. President, I am pleased to introduce today, by the administration's request a bill which reauthorizes the Head Start Program through fiscal year 1989. Although this bill is primarily a simple reauthorization of current policy, there are changes of a technical and perfecting nature designed to insure greater equality and balance in the program. It is my hope these provisions will receive the attention they deserve.

The Head Start Program has demonstrated over the past 21 years a level of effectiveness that has been well documented. There are numerous studies which show that money invested in this program pays great dividends. Head Start participant, armed with higher self-esteem and skills, ultimately are more likely to graduate from high school and thus will have a better chance of securing gainful employment. These are major factors in the development of a healthier and stronger person who is able to lead a happier and more productive life. Clearly this program has made the difference between success and failure for hundreds of thousands of disadvantaged youngsters.

I want to point out that I am also an original cosponsor of the Head Start reauthorization bill submitted by Senator HAWKINS, who chairs the Subcommittee on Children, Family, and Drugs and Alcoholism. Through the legislative process the committee will carefully consider Senator HAWKINS'

bill along with the administration's bill.

Mr. President, I urge my colleagues to join with me in supporting the Head Start Program and I ask unanimous consent that the text of this legislation be printed in the RECORD, along with a section-by-section analysis.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2438

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Head Start Amendments of 1986".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 639 of the Head Start Act (42 U.S.C. 9834) is amended—

(1) by striking out "and" after "fiscal year 1985"; and

(2) by inserting before the period at the end "$1,075,000,000 for fiscal year 1987, and such sums as may be necessary for each of fiscal years 1988 and 1989".

ELIMINATION OF COST-OF-LIVING INDEXING FOR INDIAN AND MIGRANT PROGRAMS; AMENDMENT OF FUNDING GUARANTEE

SEC. 3. Section 640(a)(2)(A) of the Head Start Act (42 U.S.C. 9835(a)(2)) is amended by striking out "except that—" and all that follows and inserting instead "except that there shall be made available for use by Indian and migrant Head Start programs for fiscal year 1987, or any subsequent fiscal year, on a nationwide basis, at least that amount which bears the same ratio to the total amount reserved under this paragraph (2) for such fiscal year, as the amount reserved hereunder for Indian and migrant Head Start programs for fiscal year 1985 bore to the total amount reserved under this paragraph for fiscal year 1985;".

ELIMINATION OF RESERVATION OF FUNDS FOR TRAINING AND TECHNICAL ASSISTANCE

SEC. 4. (a) Section 640(a)(2)(C) of the Head Start Act (42 U.S.C. 9835(a)(2)(C)) is amended by striking out all that follows "management improvement activities" and inserting a semicolon instead.

(b) Section 640(a)(2) of that Act is further amended by striking out all that follows subparagraph (D).

HEAD START EMPLOYEES INELIGIBLE FOR BETWEEN-TERM UNEMPLOYMENT COMPENSATION

SEC. 5. (a) The Head Start Act is amended by adding at the end the following new section:

"UNEMPLOYMENT COMPENSATION

"SEC. 658. For purposes of clauses (i), (ii), and (iii) of section 3304(a)(6)(A) of the Internal Revenue Code of 1954, and solely for purposes of application of that section to persons employed in a Head Start program assisted under this subchapter, any organization or governmental entity (to which reference is made in section 3309(a)(1) of the Internal Revenue Code of 1954) that employs any such person in any such Head Start program shall, if not an 'educational institution' as such term is used in such section 3304(a)(6)(A), be deemed to be such an educational institution.".

(b) Section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304) is amended by adding at the end the following new subsection:

"(g) For the special rule regarding application of this section to Head Start employees, see section 658 of the Head Start Act (42 U.S.C. 9853).".

EFFECTIVE DATE

SEC. 6. The amendments made by this Act shall become effective October 1, 1986.

HEAD START AMENDMENTS OF 1986: SECTION-BY-SECTION SUMMARY

SHORT TITLE

Section 1 of the draft bill provides the short title. When enacted, the bill would be cited as the "Head Start Amendments of 1986."

AUTHORIZATION OF APPROPRIATIONS

Section 2 authorizes appropriations, for activities under the Head Start Act, of $1,075,000,000 for FY 1987 and such sums as necessary for each of FYs 1988 and 1989.

ELIMINATION OF COST-OF-LIVING INDEXING FOR INDIAN AND MIGRANT PROGRAMS; AMENDMENT OF FUNDING GUARANTEE

Section 3 eliminates the requirement that annual cost-of-living adjustments, which would reduce the amounts available for other specified grantees and activities, be made with respect to Indian and migrant programs. However, the bill would substitute a provision assuring that Indian and migrant Head Start programs would receive, at a minimum, the same proportion of available funding in fiscal year 1987, or any subsequent fiscal year, as they received in fiscal year 1985.

ELIMINATION OF RESERVATION OF FUNDS FOR TRAINING AND TECHNICAL ASSISTANCE

Section 4 repeals the requirement, added by the 1984 amendments to the Head Start Act (P.L. 98-558), that the Secretary's discretionary expenditures for training and technical assistance for any fiscal year not be less than the total of such expenditures for FY 1982. This new requirement inappropriately restricts the Department's ability to shift funds within the Secretary's discretionary authority to best meet program needs.

HEAD START EMPLOYEES INELIGIBLE FOR BETWEEN-TERM UNEMPLOYMENT COMPENSATION

Section 5 defines all Head Start grantees as educational institutions within the meaning of section 3304(a)(6)(A) of the Federal Unemployment Tax Act, thus making all Head Start employees (including those employed by community action agencies and other nonprofit organizations other than schools) ineligible for unemployment compensation during between-term breaks in employment. This amendment would ensure that all Head Start staff are treated in the same way as Head Start employees in public school systems, who are already prohibited from collecting unemployment benefits between terms.

EFFECTIVE DATE

Section 6 provides that the amendments made by the draft bill become effective October 1, 1986.

By Mr. GARN (for himself, Mr. PROXMIRE, Mr. KERRY, Mr. HATCH, Mr. LUGAR, Mr. SARBANES, Mr. STAFFORD, Mr. LEVIN, Mr. CHAFEE, Mr. PELL, Mr. GRASSLEY, Mr. CHILES, Mr. MCCLURE, Mr. SIMON, Mr. NUNN, Mr. MOYNIHAN, Mr. LEAHY, Mr. LAUTENBERG, Mr. BAUCUS, Mr. DECONCINI, Mr. WEICKER, Mr. BOSCHWITZ, Mr. EAGLETON, Mr. BRADLEY, Mr. BENTSEN, Mr. KENNEDY, Mr. JOHNSTON, Mr. GORTON, Mr. CRANSTON, Mr. SYMMS, and Mrs. HAWKINS):

S.J. Res. 341. Joint resolution to designate the week beginning on June 1, 1986, as "National Neighborhood Housing Services Week"; to the Committee on the Judiciary.

NATIONAL NEIGHBORHOOD SERVICES WEEK

● Mr. GARN. Mr. President, today I am introducing S.J. Res. 341, calling for a Presidential proclamation of the week beginning June 1 as "National NHS Week." Neighborhood Housing Services—NHS, is the largest national, volunteer based, network of nonprofit corporations at work in our country revitalizing neighborhoods and preserving decent affordable housing for low- and moderate-income Americans. The purpose of this resolution is to strengthen the NHS network by increasing private sector awareness of, and support for their work, and to create a special opportunity to recognize the thousands of NHS volunteers who contribute so much to their local NHS programs, both in terms of their time and financial resources.

NHS has a 14-year track record of revitalizing neighborhoods and making them once again safe healthy neighborhoods where people can raise their families and do business. In 200 neighborhoods, 3 million Americans are being served by NHS programs; 1 out of every 100 homes in the country is in an NHS neighborhood. Through NHS, the residents of these neighborhoods are being given a chance to have a piece of the American dream—namely, a decent affordable home, in a safe healthy neighborhood. To date, over $3 billion has been reinvested in NHS neighborhoods; "neighborhoods once termed dangerous and deteriorated are today becoming "neighborhoods of choice." Additionally, this reinvestment figure does not capture the increased tax revenue generated through NHS, cities have seen returned many times over in tax revenue, what they have contributed to NHS and expended in public improvements.

Many of you may already be familiar with NHS through its work in your own State, or through the Neighborhood Reinvestment Corporation, created by Congress back in 1978 to help local communities develop NHS programs and to provide technical assistance to the existing network of NHS's. As a former mayor and member of the Housing Subcommittee, I have had the opportunity to witness their work first hand, and their track record of success is impressive. One of the keys to NHS's success is the working partnership of local business leaders, residents and government representatives

who form the heart of each NHS. These volunteers invest literally hundreds of hours each year managing the NHS's systematic neighborhood revitalization strategy. Further, the local business partners not only contribute the time of their local managers to serve on the NHS's Board of Directors, but also contribute thousands of dollars to the NHS's operations. Last year over 300,000 hours of volunteer time was invested in NHS and $14 million was contributed to local NHS operating budgets.

A further key to the NHS' success has been the NHS secondary market—the first national secondary market for housing rehabilitation loans which do not meet standard underwriting criteria. The NHS network has made over $100 million in loans to "nonbankable" residents for emergency home repairs, and with the creative leadership of insurance industry leaders, piloted and institutionalized a secondary market for these loans. With a 10-year track record of sound operations, this secondary market has become a national model and vital source of financing for neighborhood revitalization work across America.

The purpose of this joint resolution I am introducing today is to increase private sector awareness of, and support for NHS. Traditionally, the financial industries of banking and insurance have supported NHS's operations, but in today's economic environment there is a need to expand this base of support to other sectors of the business community. The Advertising Council's volunteer NHS campaign in conjunction with a National NHS Week will contribute significantly to these visibility efforts. Further, National NHS Week will provide a valuable opportunity to honor the thousands of NHS volunteers who are revitalizing our neighborhoods and providing decent affordable housing for low and moderate Americans—a priceless resource billions of dollars could not replace.●

By Mr. DOLE (for Mrs. HAWKINS), (for herself, Mr. DURENBERGER, Mr. MITCHELL, Mr. ABDNOR, Mr. RIEGLE, Mr. DOLE, Mr. BRADLEY, Mr. SPECTER, Mr. TRIBLE, Mr. LONG, Mr. COCHRAN, Mr. NICKLES, Mr. LUGAR, Mr. NUNN, Mr. HATCH, Mr. HOLLINGS, Mr. KASTEN, Mr. ZORINSKY, Mr. GARN, Mr. KENNEDY, Mr. ANDREWS, and Mr. SIMON):

S.J. Res. 342. Joint resolution to designate May 25, 1986, as "Missing Children Day"; to the Committee on the Judiciary.

MISSING CHILDREN DAY

(Mr. DOLE submitted the following statement on behalf of Mrs. HAWKINS).

● Mrs. HAWKINS. Mr. President, today I am introducing a joint resolution to authorize the President to declare May 25, 1986, as "Missing Children Day." Over the last 5 years we have been working to bring the tragic problem of missing children to the forefront of national attention. This joint resolution will expand awareness of the problem and will help the many groups and individuals working to locate missing children.

This date is of particular significance in the cause of missing children because on that day in 1979, 6-year-old Etan Patz disappeared on his way to school in New York City. Unfortunately, Etan has never been found. His case, however, sparked one of the most important Senate investigations since I have been a Member of this body. During our investigation into the problem of missing children, we discovered the true parameters of the missing children tragedy in this country, and we set about trying to resolve the terrible situation. Since the Senate Committee on Labor and Human Resources first explored this issue, supporters of the missing children movement have taken constructive steps to solve the problem.

One of the major accomplishments achieved has been the creation of the National Center for Missing and Exploited Children. The center was established June 13, 1984, as a national resource and technical assistance center to deal with the issues of child abduction and exploitation. The primary goals of the center have to reduce the incidence of crimes against children and to assist the criminal justice system in dealing more effectively with tragedies when they do occur.

In almost 2 years of operation, the National Center for Missing and Exploited Children has successfully met those goals. For example, the center's division for technical assistance, composed of former law enforcement and social services professionals, trained more than 12,000 of their peers in 37 States. In addition, assistance was provided families, law enforcement agencies and social services programs in all 50 States.

Another effective tool offered by the center has been its hotline, which was placed into operation October 19, 1984. Since its inception more than 156,000 calls have been received with callers giving information concerning the location of missing children, reported cases of children who were voluntarily missing, victims of parental kidnapping, and those abducted under unknown circumstances, as well as recording cases of child sexual exploitation. Further, there are at least 600 calls each day to the center's general number from persons seeking information or assistance.

These are but a few tools that have aided the center in processing more than 8,148 cases in the 2-year period since it opened. Fortunately, 4,418 children were located, but tragically, 43 were not found alive.

One story, in particular, demonstrates the successful impact that the drive for recognition of the missing children problem has had on our country. The story goes as follows.

On November 13, 1985, in a small Texas town near Dallas, a 2-month-old baby girl was kidnapped by an individual who answered an ad for a babysitter. The mother of little Mallory Elizabeth Sutton reported her disappearance to the National Center for Missing and Exploited Children, the baby's picture was immediately dispatched to various media across the country. A few hours after the baby's picture was shown on "Good Morning, America," a Houston woman reported having seen the child to the National Center's hotline. This resulted in the FBI searching in Houston, then Tampa, FL, where the child was found and reunited with her mother. This is clear evidence that illustrates how the combined contribution of individuals and organizations, properly coordinated, can bring about the safe recovery of a child.

At this time I would like to take a moment to make an announcement about an event that will take place next Saturday, May 17, 1986. On that day the Senate Sergeant at Arms Office is providing an opportunity for Senators and Senate staff to have their children fingerprinted. This is another step in what has become a national campaign to increase the awareness of missing and exploited children. This service will take place in the north servery of the Dirksen Cafeteria from 9 a.m. until 5 p.m. I commend the Office of the Sergeant at Arms for their participation in this very worthwhile exercise.

Mr. President, the purpose of this resolution is to increase public understanding and awareness of this national tragedy. The declaration of Missing Children Day will assist parents, law enforcement agencies, and concerned citizens around this country in bringing the true picture of this national tragedy to all our citizens. Since 1982 the Senate has demonstrated the foresight to declare May 25 Missing Children Day. Let us continue this very positive ritual in 1986.

I urge all my colleague to support the principles and purposes of this joint resolution to convince our Nation that we must not forget our missing children and their grieving families.

Mr. President, I ask unanimous consent that the text of this joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 342

Whereas on May 25, 1979, six-year old Etan Patz disappeared from his home in New York City and is still missing;

Whereas over one million eight hundred thousand children disappear from home annually;

Whereas children who are missing from home and are not living in a family environment are frequently the victims of sexual and physical exploitation;

Whereas an estimated 60 per centum of missing children are sexually abused while away from home;

Whereas the search for missing children is frequently a low-priority investigation in many law enforcement agencies;

Whereas efforts between Federal and local law enforcement agencies in child abduction cases are usually uncoordinated, haphazard, and ineffective; and

Whereas the problem of the missing child had been plagued by misinformation and there is a need to increase public understanding and awareness of this problem: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That May 25, 1986, is designated as "Missing Children Day", and the President is authorized and requested to issue a proclamation calling upon all Government agencies and the people of the United States to observe the day with appropriate ceremonies, programs, and activities.●

By Mr. D'AMATO:

S.J. Res. 343. Joint resolution designating the week of September 21, 1986, through September 27, 1986, as "Emergency Medical Services Week"; to the Committee on the Judiciary.

EMERGENCY MEDICAL SERVICES WEEK

● Mr. D'AMATO. Mr. President, the field of medicine is constantly evolving. Perhaps more than any other medical specialty, emergency medicine has experienced significant changes in the shortest period of time.

We are all familiar with the origins of emergency medicine. The battlefield medical systems and procedures employed in Korea and Vietnam taught us more about emergency medicine than anything prior to that time. It was said that, in the 1960's a man with a shotgun wound in Vietnam has a better chance of surviving than a critically injured person on a U.S. highway.

When emergency medical services [EMS] was formally established in the United States under the Highway Safety Act of 1966, 50 percent of the countries ambulance services were provided by 12,000 morticians, mainly because their vehicles could accommodate transportation on stretchers, and because no manufacturer produced an assembly line vehicle that could be termed an ambulance. However, with improved capabilities for emergency care, and with the enormous expansion of emergency medical services across the Nation, we have made tremendous strides in this field of medicine.

Today, with roughly 50,000 ambulances operating throughout the United States, and with highly advanced communications systems now in place that were absent in the 1960's, individuals involved in EMS are able to handle emergencies quickly and at a much greater level of efficiency.

From 1965 to 1983, the number of individuals per 100,000 who have died from auto accidents decreased from 25.4 to 19.1; from accidental falls, 10.3 to 5; from fires and burns, 3.8 to 2; from ingestion of foods or objects, from 0.8 to 0.6; and from drowning, 1.2 to 0.8. These reductions are, in large part, due to vastly improved emergency medical services.

Of course, no one really plans on having a medical emergency; many of us have an it-can't-happen-to-me attitude. Nevertheless, statistics show that you or someone you know will likely need emergency medical treatment sometime during the next year. When an emergency does arise, providers of emergency health care ensure that we receive the best possible treatment available.

Providers of emergency medical services include educators of emergency medical procedures, administrators, physicians, nurses, prehospital-care technicians, paramedics, and lay people who have learned CPR and other quick stabilization procedures. In some States, volunteer units, often working out of volunteer fire departments, play a significant role in providing EMS. In some States, nearly 80 percent of EMS involves volunteers. It is important that EMS providers be able to respond quickly to emergency calls. In most regions of the United States, one need only to dial 911, which enables us to locate EMS personnel quickly for medical emergencies.

Properly trained and equipped EMS personnel are especially important to our elderly. There is a higher death rate among our elderly as a result of injury than any other age group, and they are less likely to recover completely or even to survive once injured. Today, elderly patients, as well as every other American, in need of emergency medical care, can rest assured that they will receive high-quality care because of the advances that have occurred in the field of emergency medicine. This is evidenced by the ability of emergency departments to handle the ever-increasing influx of patients.

The incidence of patients visits to emergency departments across the country has increased dramatically. In 1960, there were 42 million patient visits. By 1977, this figure had grown to 76 million. This year, over 81 million patient visits will be recorded in emergency departments throughout the United States.

To recognize the countless dedicated men and women who provide us with quick, effective emergency medical care—and to elevate the public's awareness of the importance of knowing what steps to take in the event, or in the prevention, of an emergency—I am introducing today a joint resolution to designate the week beginning September 21, 1986, as Emergency Medical Services Week. My colleague from New York, Congressman MANTON, has introduced an identical resolution which already has 114 cosponsors.

In 1984, Congress passed legislation, Public Law 98-414, which designated the week of September 16 through 22, 1984, as Emergency Medicine Week. My resolution expands the coverage given Public Law 98-414 to include the educators and administrators involved in EMS, as well. It is necessary that we also recognize these men and women involved in the instructional and administrative aspects of emergency medical care.

In the State of New York, there are 16 regional councils, directed by the State health department, that oversee EMS operations. Recently, $2.4 million was authorized for EMS training throughout New York State, and legislation is currently being developed as an effort to improve such training to the greatest extent possible. These efforts are taking place across the country. As a result, emergency medical aid is growing exponentially.

I urge my colleagues to consider the importance of this resolution, as it relates to the health and well-being of all Americans. I urge my colleagues to lend this resolution their full support. I also ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 343

Whereas the members of emergency medical services teams devote their lives to saving the lives of others;

Whereas emergency medical services teams consist of emergency physicians, nurses, emergency medical technicians, paramedics, educators, and administrators;

Whereas the people of the United States benefit daily from the knowledge and skill of these trained individuals;

Whereas advances in emergency medical care increase the number of lives saved every year;

Whereas the professional organizations of providers of emergency medical services promote research to improve emergency medical care;

Whereas the members of emergency medical services teams work together to improve and adapt their skills as new methods of emergency treatment are developed;

Whereas the members of emergency medical services teams encourage national standardization of training and testing of emergency medical personnel, and reciprocal rec-

ognition of training and credentials by the States;

Whereas the designation of "Emergency Medical Services Week" will serve to educate the people of the United States about accident prevention and what to do when confronted with a medical emergency; and

Whereas it is appropriate to recognize the value and the accomplishments of emergency medical services teams by designating "Emergency Medical Services Week": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of September 21, 1986, through September 27, 1986, is designated as "Emergency Medical Services Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.●

ADDITIONAL COSPONSORS

S. 1446

At the request of Mr. ANDREWS, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 1446, a bill to amend title 38, United States Code, to improve veterans' benefits for former prisoners of wars.

S. 1801

At the request of Mr. EAST, the name of the Senator from Mississippi [Mr. STENNIS] was added as a cosponsor of S. 1801, a bill to amend the Trade Act of 1974 to promote expansion of international trade in furniture with Canada, and for other purposes.

S. 1938

At the request of Mr. METZENBAUM, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 1938, a bill to make permanent the requirements of the manufacturing clause of the copyright law.

S. 2152

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 2152, a bill to amend title 10, United States Code, to require the Department of Defense to exclude from consideration for contracts those firms in which a hostile foreign government or a covered foreign national owns or controls a significant interest.

S. 2166

At the request of Mr. DURENBERGER, the names of the Senator from Nevada [Mr. HECHT], and the Senator from North Carolina [Mr. EAST] were added as cosponsors of S. 2166, a bill to amend the Internal Revenue Code of 1954 to modify the tax treatment of tax-exempt municipal bonds, and for other purposes.

S. 2181

At the request of Mr. D'AMATO, the name of the Senator from Montana [Mr. BAUCUS] was withdrawn as a cosponsor of S. 2181, a bill entitled the Construction Industry Labor Law Amendments of 1986.

S. 2186

At the request of Mr. MURKOWSKI, the name of the Senator from Georgia [Mr. MATTINGLY] was added as a cosponsor of S. 2186, a bill to exempt any amounts available to provide certain benefits to veterans with service-connected disabilities from any requirement for sequestration of funds under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

S. 2243

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 2243, a bill to improve the health status of native Hawaiians, and for other purposes.

S. 2398

At the request of Mr. ROTH, the names of the Senator from North Carolina [Mr. EAST], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 2398, a bill to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes.

S. 2417

At the request of Mr. BYRD, the name of the Senator from North Dakota [Mr. ANDREWS] was added as a cosponsor of S. 2417, a bill to establish the Aviation Safety Commission, and for other purposes.

SENATE JOINT RESOLUTION 326

At the request of Mr. WALLOP, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from New Hampshire [Mr. HUMPHREY], and the Senator from Virginia [Mr. TRIBLE] were added as cosponsors of Senate Joint Resolution 326, a joint resolution to proclaim May 21, 1986, as "Andrei Sakharov Honor and Freedom Day."

SENATE JOINT RESOLUTION 333

At the request of Mr. ANDREWS, the names of the Senator from Arizona [Mr. DECONCINI], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of Senate Joint Resolution 333, a joint resolution designating the week of May 18, 1986, through May 24, 1986, as "National Food Bank Week."

SENATE JOINT RESOLUTION 339

At the request of Mr. HATCH, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Connecticut [Mr. DODD], and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of Senate Joint Resolution 339, a joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week."

SENATE RESOLUTION 369

At the request of Mr. MCCONNELL, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of Senate Resolution 369, a resolution relating to trade between the United States and the Republic of Korea.

AMENDMENTS SUBMITTED

DRUG EXPORT LEGISLATION

METZENBAUM AMENDMENT NO. 1948 THROUGH 1950

Mr. METZENBAUM proposed three amendments to the bill (S. 1848) to amend the Federal Food, Drug, and Cosmetic Act to establish conditions for the export of drugs; as follows:

AMENDMENT No. 1948

At the end, add the following:

SEC. 9. Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (h), (i), and (j), respectively;

(2) by striking out the last sentence of paragraph (1) of subsection (h) (as redesignated by clause (1) of this section) and inserting in lieu thereof the following new sentence: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.";

(3) by striking out "subsection (a)(2)" in subsection (j) (as redesignated by clause (1) of this subsection) and inserting in lieu thereof "subsection (a)(3)"; and

(4) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a)(1) An infant formula (including infant formula powder) shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (j);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under this section.

"(2)(A) The Secretary shall by regulation—

"(i) establish requirements for quality factors for infant formulas, including requirements for the nutrients required by subsection (j);

"(ii) establish—

"(I) good manufacturing practices for infant formulas, including quality control procedures; and

"(II) requirements respecting the retention of records,

that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this section and will not cause harm; and

"(iii) establish requirements for the conduct by the manufacturer of an infant formula of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under clause (ii).

"(B) The good manufacturing practices and quality control procedures prescribed by the Secretary under subparagraph (A)(ii) shall include requirements for—

"(i) the testing of each batch of infant formula for each nutrient required pursuant to subsection (j) prior to the distribution of such batch in order to ensure that such formula is in compliance with this section and does not contain any deleterious or otherwise unsafe substance; and

"(ii) regularly scheduled testing of samples of infant formulas during the shelf life of such formulas in order to ensure that such formulas are in compliance with this section and do not contain any deleterious or otherwise unsafe substance.

"(C) The record retention requirements prescribed by the Secretary under subparagraph (A)(ii) shall include requirements for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under such subparagraph, including records containing the results of all testing required by subparagraph (B);

"(ii) the retention of copies of all records prepared by suppliers of raw materials and food packaging materials used in the processing of infant formula to demonstrate compliance by such suppliers with all regulations, guidelines, and action levels prescribed by the Secretary with respect to such raw materials and food packaging materials and with respect to infant formula;

"(iii) the retention of all records pertaining to the microbiological quality and purity of raw materials used in infant formula and of finished infant formula (including infant formula powder);

"(iv) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under subparagraph (A)(iii); and

"(v) the maintenance of files with respect to, and the review of, complaints concerning infant formulas.

Records required under this paragraph with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Such records shall be made available to the Secretary for review and duplication upon request of the Secretary.

"(D) In prescribing requirements for audits under subparagraph (A)(iii), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for ensuring that the manufacturer of an infant formula complies with the regulations prescribed by the Secretary under subparagraph (A)(ii).

"(3) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (j); and

"(B) revise the required level for any nutrient required by subsection (j).

"(b) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless an application has been filed pursuant to subsection (c) with respect to such formula and such application has not been disapproved. For purposes of this section, the term 'new infant formula' includes any infant formula for which there has been a change in formulation or processing which may affect whether the formula is adulterated within the meaning of this section.

"(c) A person shall, with respect to any infant formula subject to the provisions of subsection (b), file with the Secretary an application. Each such application shall include—

"(1) full reports of testing demonstrating that such infant formula provides nutrients in accordance with subsection (j) and complies with the quality factor requirements prescribed by the Secretary under subsection (a)(2)(A)(i);

"(2) records demonstrating that the processing of such infant formula complies with the regulations prescribed by the Secretary under subsection (a)(2)(A)(ii); and

"(3) such additional information as the Secretary may by regulation prescribe.

"(d) Within ninety days after an application is filed under subsection (c), or prior to the end of such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall either—

"(1) approve the application if the Secretary finds that the infant formula complies with the requirements of this section and the regulations prescribed by the Secretary under subsection (a)(2)(A); or

"(2) deny the application.

"(e) An applicant whose application has been denied under subsection (d)(2) may appeal such denial pursuant to procedures specified in regulations prescribed by the Secretary. After the applicant has exhausted the remedies specified in such procedures, the applicant may appeal the denial of such application to the United States court of appeals for the circuit wherein such applicant resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of the Secretary's final order denying such application.

"(f)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (j); or

"(B) may be otherwise adulterated of misbranded, the manufacturer shall promptly notify the Secretary of such knowledge and shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, and to assist such retail establishments in publicizing such recall in a manner reasonably designed to notify purchasers of such infant formula of such recall are the reasons for such recall.

"(2) For purposes of paragraph (1) the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(g)(1) If a recall of an infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation—

"(A) prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall; and

"(B) require the posting of a notice of any recall of an infant formula at each place where such formula is sold or was available for sale.".

AMENDMENT No. 1949

On page 37, between lines 20 and 21, insert the following:

"(9) For the purpose of implementing and monitoring compliance with the requirements of this subsection, the Secretary shall enter into agreements with or utilize the services of any foreign government or United States embassy in a foreign country to obtain drug labeling used in any foreign country or information available in a foreign country with respect to the safety and effectiveness of drugs.".

AMENDMENT No. 1950

On page 37, between lines 20 and 21, insert the following:

"(9) An antibiotic drug which is subject to certification by the Secretary under section 507 may be shipped for export only to a country described in paragraph (2) and only if the antibiotic drug meets the requirements of paragraph (3).

SEC. 4. (a)(1) The provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act, as added by section 3 of this Act, shall not apply, for a period of one year beginning on the date of enactment of this Act, to any antibiotic drug which—

(A) is subject to certification by the Secretary of Health and Human Services under section 507 of the Federal Food, Drug, and Cosmetic Act;

(B) has been exported prior to the date of enactment of this Act;

(C) does not comply with the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act, as added by section 3 of this Act; and

(D) complies with the provisions of paragraph (2).

(2) An antibiotic drug to which paragraph (1) applies may be exported if—

(A) such antibiotic drug has not been the subject of final action by the Secretary of Health and Human Services denying, withdrawing, or suspending approval or certification of such antibiotic drug on the basis of safety and effectiveness, or otherwise banning such antibiotic drug on such basis; and

(B) such antibiotic drug is not the subject of a notice by the Secretary of Health and Human Services of a determination that the sale of such antibiotic drug in the foreign country to which such antibiotic drug is to be exported is contrary to the public health and safety of such country.

(b) The Secretary of Health and Human Services may extend the one-year period for which, pursuant to subsection (a)(1), the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act do not apply to an antibiotic drug if the Secretary determines that the manufacturer of such antibiotic drug is making a good faith effort to comply with the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic

Act, as added by section 3 of this Act, with respect to such antibiotic drug. Any extension under this subsection shall be for a period not in excess of one year.

PRODUCT LIABILITY VOLUNTARY CLAIMS AND UNIFORM STANDARD ACT

DANFORTH AMENDMENT NO. 1951

(Ordered referred to the Committee on Commerce, Science, and Transportation.)

Mr. DANFORTH submitted an amendment intended to be proposed by him to the bill (S. 1999) to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I

SHORT TITLE

SEC. 101. This Act may be cited as the "Product Liability Reform Act".

DEFINITIONS

SEC. 102. (a) As used in this Act, the term—

(1) "capital good" means any product, other than a motor vehicle, or a vessel, aircraft, or railroad used primarily to transport passengers for hire, or any component of any such product, if it is also of a character subject to allowance for depreciation under the Internal Revenue Code of 1954 and was—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold, leased, or donated to a governmental or private entity for the production of goods, for training, for demonstration, or other similar purposes;

(2) "claimant" means any person who submits an expedited settlement claim subject to title II of this Act or brings a civil action subject to title III of this Act, and any person on whose behalf such a claim is submitted or such an action is brought; if such a claim is submitted or such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(3) "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established; the level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt;

(4) "collateral benefits" means all benefits and advantages received or entitled to be received (regardless of any right any other person has or is entitled to assert for recoupment through subrogation, trust agreement, lien, or otherwise) by any claimant harmed by a product or by any other person as reimbursement of loss because of harm to person or property payable or required to be paid to the claimant, under—

(A) any Federal law or the laws of any State (other than through a claim for breach of an obligation or duty); or

(B) any life, health or accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance or any benefit received or to be received as a result of participation in any pre-paid medical plan or Health Maintenance Organization;

(5) "commerce" means trade, traffic, commerce, or transportation (A) between a place in a State and any place outside of that State; or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(6) "commercial loss" means economic injury, whether direct, incidental, or consequential, including property damage and damage to the product itself, incurred by persons regularly engaged in business activities consisting of providing goods or services for compensation;

(7) "dignitary loss" means non-economic loss resulting from harm caused by a product, compensable under State law, not in excess of $250,000, and consisting of pain and suffering or mental anguish associated with (A) the death of a parent, child or spouse, (B) permanent and gross disfigurement, (C) permanent loss of a limb or organ, or (D) serious and permanent impairment of a bodily function;

(8) "economic loss" means any pecuniary loss resulting from harm caused by a product which is compensable under State law;

(9) "exercise of reasonable care" means conduct of a person of ordinary prudence and intelligence using the attention, precaution and judgment that society expects of its members for the protection of their own interests and the interests of others;

(10) "harm" means (A) personal physical illness, injury, or death of the claimant; (B) mental anguish or emotional harm of the claimant caused by or causing the claimant's personal physical illness or injury; and (C) physical damage to property other than the product itself; the term does not include commercial loss;

(11) "manufacturer" means (A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product); (B) a product seller with respect to all aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or (C) any product seller not described in clause (B) which holds itself out as a manufacturer to the user of a product;

(12) "net economic loss" means, in accordance with subsection (b) of this section—

(A) reasonable expenses incurred for reasonably needed and used medical and rehabilitation care and services;

(B) lost income from work which the claimant would have performed if the claimant had not suffered harm, reduced by any income earned from substitute work actually performed by the claimant or by income the claimant would have earned in available appropriate work which the claimant was capable of performing but unreasonably failed to undertake;

(C) reasonable expenses incurred in obtaining ordinary and necessary services in lieu of those the claimant would have performed, not for income, but for the benefit of the claimant or the claimant's immediate family, if the claimant had not suffered the harm;

(D) lost earnings of a deceased person who suffered fatal harm caused by a product which, if the person had not died, would have been contributed to claimants who are entitled to receive benefits by reason of such person's death under the law of the place where the deceased person was domiciled; and

(E) reasonable expenses incurred by the claimant in preparation and submission of a expedited settlement claim prior to the date on which notice is given by the manufacturer pursuant to section 205(b) or 205(c) of title II of this Act, including a reasonable attorney's fee,

less the total amount of collateral benefits paid or payable to the claimant by reason of the same harm;

(13) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(14) "preponderance of the evidence" is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(15) "product" means any object, substance, mixture, or raw material in a gaseous, liquid or solid state (A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state or as a component part or ingredient, (B) which is produced for introduction into trade or commerce, (C) which has intrinsic economic value, and (D) which is intended for sale or lease to persons for commercial or personal use; for the purposes of this Act, the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(16) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;

(17) "Secretary" means the Secretary of Commerce;

(18) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof; and

(19) "toxic harm" means harm which is functional impairment, illness, or death of a

human being resulting from exposure to an object, substance, mixture, raw material or physical agent of particular chemical composition.

(b)(1) The lost income taken into account under subsection (a)(12)(B) of this section shall be reduced by the amount of all Federal, State, and local income taxes and any Social Security or other payroll taxes which would be applicable to such income, but which would not be applicable to compensation paid under this Act.

(2) For purposes of this Act, the net economic loss of a claimant is limited to those expenses and losses specified in subsection (a)(12) of this section that have accrued as of the date on which the settlement claim is filed, plus the present value of future losses reasonably expected to be incurred, unless payment of settlement is made pursuant to section 104 of this Act.

(3) Where harm occurs in circumstances that might entitle a claimant to benefits (including workers' compensation benefits) which would reduce the amount of the claimant's net economic loss in accordance with subsection (a)(12) of this section and it cannot reasonably, within the time provided for payment of net economic loss under section 205 or 302 of this Act or any reasonable extension of such time, be determined whether or in what amount such benefits will be payable, the manufacturer or product seller shall place in an interest-bearing escrow account that portion of the economic loss which the manufacturer reasonably anticipates the claimant will receive from such other sources, until the claimant's right to such benefits and the amount of such benefits finally has been determined under applicable law.

(4)(A) The total amount of compensation for economic loss paid or payable to a claimant from any other source shall, for purposes of subsection (a)(12) of this section, be reduced by the amount of legal fees and other costs incurred by the claimant in collecting such compensation.

(B) Attorney's fees may be on a contingent basis but, for the purposes of subsection (a)(12) of this section, shall be calculated solely on the basis of an hourly rate which should not exceed that which is considered acceptable in the community in which the attorney practices, considering the attorney's qualifications and experience and the complexity of the case.

(5) Except as otherwise provided by any provision of Federal law, no program of compensation, whether public or private, the benefits of which would be deducted from a claimant's economic loss in order to calculate net economic loss under subsection (a)(12) of this section, may make payment of benefits secondary to payment of net economic loss by a manufacturer under this Act.

PREEMPTION

SEC. 103. (a) This Act governs any civil action brought against a manufacturer or product seller, on any theory, for personal injury or property damage caused by a product. A civil action brought against a manufacturer or product seller for loss or damage to a product itself or for commercial loss is not subject to this Act and shall be governed by applicable commercial or contract law.

(b) No civil action may be brought in any Federal or State court against a manufacturer or product seller for personal injury or property damage caused by a product other than an action for recovery for harm brought pursuant to this Act.

(c) This Act supersedes any State law regarding recovery for any injury or damage caused by a product only to the extent that this Act establishes rule of law applicable to any such recovery. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(d) Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) supersede any Federal law, except the Federal Employees Compensation Act;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. 1602 et seq.);

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, clean up costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment, or the threat of such contamination or pollution.

(e) As used in this section, "environment" has the meaning given to such term in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)).

(f) This Act shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdictions.

SETTLEMENT PAYMENTS

SEC. 104. Any tender of settlement under section 205 or 302 of this Act, or any settlement under the arbitration proceedings initiated under section 206 of this Act, may be made by—

(1) the payment of net economic loss previously incurred and any dignitary loss, and an enforceable promise to pay future otherwise uncompensated net economic loss as it is incurred,

(2) an agreement to pay net economic loss and any dignitary loss by means of an annuity, or

(3) payment of a lump sum,

except that, at the request of any party to such a settlement, payment shall be made in the manner prescribed in paragraph (1) of this section.

EFFECTIVE DATE

SEC. 105. (a) This Act shall take effect 90 days after the date of its enactment and shall apply to all expedited settlement claims submitted pursuant to title II of this Act on or after that date and all civil actions subject to title III of this Act commenced on or after that date, including any claim or action in which the harm or the conduct which caused the harm occurred before the effective date.

(b) If any provision of this Act would shorten the period during which a manufacturer or product seller would otherwise be exposed to liability, the claimant may, notwithstanding the otherwise applicable time period, submit an expedited claim to such a manufacturer or bring any civil action governed by this Act within one year after the effective date of this Act.

TITLE II

EXPEDITED PRODUCT LIABILITY SETTLEMENT PROCEDURE

SEC. 201. (a) A person who has suffered harm caused by a product, other than an employee of the product's manufacturer who suffers such harm in the course of his employment, may submit an expedited settlement claim under this title to the manufacturer or product seller.

(b) A person who submits such a claim under this title for harm caused by a product may not seek recovery for damages arising from the same harm in a civil action governed by title III of this Act, if the manufacturer or product seller—

(1) makes payment of net economic loss, or any dignitary loss, or both, to the claimant, pursuant to section 205(b) of this title; or

(2) declines to make full payment for such losses solely because of a dispute over the amount of settlement, pursuant to section 205(c) of this title.

(c) No person may submit an expedited settlement claim to a manufacturer or product seller under this title if there is pending a civil action brought by such person under any theory, under any law, to recover damages for the same harm.

(d) In the absence of a prior written agreement to the contrary, a manufacturer or product seller who makes payment under this title for damages caused by a product may not be made a defendant in any action brought by any other party for contribution, reimbursement, subrogation or indemnity for damages arising from the same harm, except as provided in section 205 of this title.

(e) Payment of an expedited settlement claim for harm under this title shall not bar an action governed by title III of this Act for associated harm which is physical damage to property other than the product itself.

SETTLEMENT CLAIMS

SEC. 202. A claimant seeking recovery for harm caused by a product under this title may submit an expedited settlement claim only for the claimant's net economic loss, or any dignitary loss, or both.

SUBMISSION OF AN EXPEDITED SETTLEMENT CLAIM

SEC. 203. (a) A person seeking to recover under this title from a manufacturer or a product seller for harm caused by a product shall submit an expedited claim by certified mail, return receipt requested, to the manufacturer or product seller.

(b) In order to be deemed a valid settlement claim for purposes of this title, notice of the claim submitted to the manufacturer or product seller pursuant to subsection (a) of this section must be accompanied by—

(1) except as provided in subsection (c) of this section, in the case of a manufacturer, reasonable proof that the manufacturer made or that the product seller sold the individual product unit that caused the harm;

(2) a detailed description of the product, including where appropriate and available the serial number of the product;

(3) full information regarding the date, place, and time of the harm's occurrence, the cause, nature and extent of the harm, and the nature and the amount of economic

loss caused by the harm, and any dignitary loss;

(4) copies of all bills for which payment is sought, including medical bills;

(5) copies of all medical reports or records within the possession or control of the claimant relating to the harm for which recovery is sought;

(6) a statement of lost income for which recovery is sought, together with evidence of the claimant's employment history and earnings;

(7) the names and addresses of all known witnesses to the occurrence of the harm, and (where practical) copies of the statements of such witnesses;

(8) the name and address of any other source of compensation paid or payable to the claimant for such economic loss, and the amount of any such compensation; and

(9) an affirmation or declaration, under penalties of perjury, that, to the best of the claimant's knowledge, the information provided with the claim is accurate and complete.

(c) Any person seeking to recover under this title for harm of a kind which manifests itself only many years after exposure may, where it is not possible for such person, despite every reasonable effort, to identify the manufacturer of the individual product unit that caused the harm, submit a product liability settlement claim in accordance with the provisions of this section to any manufacturer of a product that is identical or chemically indistinguishable from the product which caused the harm if that manufacturer's product was available at the time, when, and in the market in which, the product that caused the harm was purchased. In addition to the information required by subsection (b) of this section, the claimant shall provide the manufacturer with an adequate explanation of its inability to identify the manufacturer of the individual product unit which caused the harm.

(d) In any arbitration proceedings brought pursuant to this Act, no evidence may be admitted on behalf of the claimant which was not provided or made available to the manufacturer or product seller pursuant to this section, except upon a showing that such evidence could not have been discovered by the claimant in the exercise of due diligence prior to the date of the determination of the manufacturer or product seller pursuant to section 205 of this title or section 302(a) of this Act.

(e) An expedited settlement claim under this section must be submitted within two years of the time the claimant discovered or in the exercise of reasonable care should have discovered the harm and its cause, except that a claim of a person under legal disability may be submitted within two years after the disability ceases.

DUTY TO DISCLOSE INFORMATION

SEC. 204. (a) When a claimant has filed a valid settlement claim under section 203 of this title, the claimant shall—

(1) cooperate fully and expeditiously with the manufacturer or product seller in its reasonable investigation of the circumstances of the harm and of the loss claimed as a result of such harm; and

(2) promptly update during the course of the manufacturer's or product seller's investigation all medical information and information relevant to the calculation of net economic loss and any dignitary loss previously furnished pursuant to section 203(b) of this title.

(b) In addition to the information to be furnished pursuant to section 203(b) of this title, the claimant shall, upon request—

(1) deliver to the manufacturer or product seller a copy of every written report made before or after the date of request, which is available to the claimant and is not otherwise available to the person making the request, concerning any relevant medical treatment or examination of the claimant;

(2) deliver to the manufacturer or product seller the names and addresses of all physicians, hospitals and other persons examining, diagnosing, treating, or providing services to the claimant in connection with the harm or any other relevant past injury. The claimant shall authorize the person making such request to inspect all relevant records made by such persons;

(3) submit to a physical or medical examination, or both, by a health care provider specified and compensated by the manufacturer or product seller;

(4) deliver to the manufacturer or product seller the names and addresses of any experts upon whom the claimant relies, together with copies of the opinions of such experts; and

(5) where the product alleged to have caused the harm is in the possession or control of the claimant, provide the manufacturer with a reasonable opportunity to inspect, photograph or test such product.

(d) Any person (other than the claimant) providing information pursuant to this section shall be entitled to reimbursement from the requesting party for costs reasonably incurred in providing such information.

(e) If a claimant fails to comply with the provisions of subsection (a), (b) or (c) of this section, the claimant's expedited settlement claim shall be deemed to be invalid.

PAYMENT OR REJECTION OF A VALID SETTLEMENT CLAIM

SEC. 205. (a) Within ninety days of receipt of a valid settlement claim submitted under section 203 of this title (unless a longer period is agreed to by the claimant), a manufacturer or product seller shall determine whether to pay such claim, and shall give notice of its determination to the claimant by certified mail, return receipt requested, in accordance with this section. Any other person provided with notice by the manufacturer or product seller that a valid settlement claim has been submitted shall, within 180 days of receipt of such notice, determine whether to contribute its proportionate share of such claim.

(b) If a manufacturer or product seller decides to pay such claim, it shall notify the claimant that it will tender settlement of losses sought by the claimant and payable pursuant to section 202 of this title, and make payment to the claimant for any such losses pursuant to section 104 of this Act.

(c) If a manufacturer or product seller decides to pay such claim, but declines to make full payment of the claim because of a dispute over the amount of loss payable pursuant to section 202 of this title, the manufacturer or product seller shall notify the claimant of such determination. The manufacturer shall pay the undisputed portion of the claim and provide the claimant with a written explanation of the claimant's rights under section 206 of this title. Within one hundred and twenty days of the effective date of this Act, the Secretary shall make available a model explanation of such rights. A manufacturer who provides a claimant with copies of such explanation shall be deemed to have satisfied the requirements of this subsection.

(d) If the manufacturer or product seller determines that it will not pay such claim, it shall give the claimant written notice of rejection of the claim, together with a written explanation of the claimant's rights under section 207 of this title. Within one hundred and twenty days of the effective date of this Act, the Secretary shall make available a model explanation of such rights. A manufacturer who provides a claimant with copies of such explanation shall be deemed to have satisfied the requirements of this subsection.

RIGHTS UPON DENIAL OF FULL PAYMENT

SEC. 206. (a)(1) If a manufacturer or product seller has advised a claimant that it declines to make full payment of an expedited claim submitted under this title solely because of a dispute over the amount of loss payable pursuant to section 202 of this title, the claimant may, within ninety days of such notice, initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from a roster of arbitrators maintained by the Service for such purpose. The manufacturer or product seller shall submit to such arbitration and shall be bound by any final determination of such proceedings.

(2) If a dispute regarding reimbursement arises pursuant to section 208 of this title, the parties to the dispute may, by mutual agreement, initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from a roster of arbitrators maintained by the Service for such purpose. Such parties shall be bound by any final determination in such proceedings.

(b)(1) The Service shall adopt procedures and rules applicable to the selection of arbitrators and to the conduct of arbitration proceedings under this section. In order that such proceedings may be expeditious, informal, and reasonably inexpensive in cost, the Service's rules shall provide, among other provisions, that unless agreed otherwise by the parties—

(A) no prehearing discovery shall be permitted;

(B) any hearing shall be held in the community in which the claimant resides, except in the case of any arbitration proceedings arising from a dispute regarding reimbursement pursuant to section 208 of this title;

(C) the matter may, upon the request of the claimant, be submitted to the arbitrator for decision without written posthearing briefs;

(D) the arbitrator shall hear the case within 60 days after the date of the arbitrator's appointment and render a decision within 30 days after submission of the case for decision; and

(E) with respect to any dignitary loss, the arbitrator may award the claimant only either the amount sought by the claimant at the start of the hearing or the amount last offered by the manufacturer or product seller at the start of the hearing.

To the extent possible, similar awards shall be made for dignitary loss arising from similar injuries.

(2) The findings and determinations of the arbitrator shall be in writing and shall be final and conclusive. Such findings and determinations shall be enforceable in any court of competent jurisdiction. No official or court of the United States shall have power or jurisdiction to review any such findings and determinations except where

there is alleged fraud, misrepresentation, or similar misconduct by one of the parties to the arbitration or the arbitrator and where there is a verified complaint with supporting affidavits attesting to specific instances of fraud, misrepresentation, or other misconduct.

(c) If the arbitrator finds that the claimant was the prevailing party, the arbitrator shall increase the amount of the award payable to the claimant by reasonable attorney's fees and expenses incurred in connection with the arbitration proceeding.

(d) The manufacturer or product seller shall pay the fee and expenses of the arbitrator, except that if the arbitrator finds that the manufacturer was the prevailing party, the manufacturer or product seller shall be entitled to recover from the claimant or the claimant's attorney all such sums paid to the arbitrator, except that, in arbitration proceedings with respect to a dispute regarding reimbursement under subsection (a)(2) of this section, the parties shall contribute equal shares of the fee and expenses of the arbitrator.

(e) Arbitration under this section shall be a claimant's exclusive remedy where the manufacturer or product seller declines to make full payment of an expedited settlement claim under this title because of a dispute over the amount of claimant's loss.

RIGHTS UPON REJECTION OF CLAIM

SEC. 207. (a) If a manufacturer or product seller gives notice to a claimant pursuant to section 205(d) of this title that it will not pay a valid settlement claim, or if a manufacturer or product seller fails to respond to such a claim as required by section 205(a) of this title, the claimant may bring a civil action for damages arising from the same harm subject to the provisions of title III of this Act.

(b)(1) If the manufacturer or product seller is found liable in such civil action, the court shall award additional damages to the claimant in an amount equal to (A) 25 percent of the judgment, plus (B) 1 percent per month for each month after the date on which the manufacturer or product seller rejected the settlement claim or failed to respond pursuant to section 205 of this title until the date of entry of the claimant's judgment.

(2) In determining the amount of additional damages to be awarded under paragraph (1) of this subsection, the court may diminish the amount of additional damages in paragraph (1)(B) of this subsection if the action was delayed by causes not attributable to the manufacturer or product seller, including a congested court calendar, or if the action was prolonged because of novel or complex legal issues or complex factual issues.

(3) Such additional damages shall not be awarded in any action in which an expedited settlement claim was submitted pursuant to section 203(c) of this title, if the law of the State which governed such action did not provide, at the time such claim was submitted, for recovery in the absence of proof that the manufacturer made the individual product unit that caused the harm.

REIMBURSEMENT

SEC. 208. (a)(1) Subject to the provisions of this subsection, if any manufacturer or product seller has paid an expedited settlement claim pursuant to this title, the claimant is barred from bringing a civil action under any theory, under any law, against any person for damages arising from the same harm.

(2) A manufacturer or product seller which has offered to pay or agreed to pay the claimant's loss pursuant to section 205 of this title is subrogated to the claimant's right to recovery to the extent that the amount of loss paid or to be paid exceeds the comparative proportion of responsibility for such loss of such manufacturer or product seller.

(3)(A) If any person who is responsible for causing the claimant's harm refuses to contribute such person's proportionate share of such loss pursuant to this title, the manufacturer or product seller which has offered to pay or agreed to pay such loss may recover from such person a total amount equal to the amount of subrogation recovery pursuant to subsection (a)(2) of this section plus one-half of the amount of such subrogation recovery, in additon to reasonable attorney's fees and costs incurred in seeking such subrogation recovery.

(B) The court may waive the provisions of subparagraph (A) of this paragraph if—

(i) notice of the expedited settlement claim and opportunity to participate in the settlement were not provided to the person against whom the subrogation right is asserted pursuant to section 205 of this title; or

(ii) the person against whom the subrogation right is asserted has offered to submit the dispute to arbitration pursuant to section 206 of this title, and the person asserting the subrogation right has refused such offer.

(4) If an action is brought under this section against another person (other than the claimant's employer of fellow employee) for contribution, reimbursement or indemnity and the action is not a product liability action, as defined in this Act, such action shall be governed by applicable standards of liability under State or Federal law.

(b) A manufacturer or product seller may pursue its subrogation rights—

(1) where a claim was paid pursuant to section 205 of this title, either in the appropriate court of a State in which jurisdiction over the parties may be had or, if the requirements of section 1332 of title 28, United States Code, are satisfied, in an appropriate district court of the United States; or

(2) in the court which had jurisdiction over such civil action.

(c) Neither the claimant's employer nor any insurer shall have any right of subrogation, contribution, or indemnity against the manufacturer or product seller or any lien on the claimant's recovery from the manufacturer or product seller, nor shall the manufacturer or product seller have any right of contribution or indemnity against the claimant's employer or fellow employee.

TIME LIMITATION ON SETTLEMENT CLAIMS

SEC. 209. Any settlement claim submitted by a claimant under this title shall be barred, if a product which is a capital good is alleged to have caused harm which is not toxic harm, unless the settlement claim was submitted within twenty-five years after the date of delivery of the product to its first purchaser or lessee who was not engaged in the business of selling or leasing the product or using the product as a component in the manufacture of another product.

COLLECTIVE PROCESSING OF CLAIMS

SEC. 210. Nothing in this title or in the antitrust laws of the United States or of any State shall preclude manufacturers or product sellers from establishing and maintaining collective means of and facilities for processing claims which are submitted under this title.

TITLE III

CIVIL ACTIONS

SEC. 301. A person seeking to recover for harm caused by a product may bring a civil action against the product's manufacturer or product seller pursuant to applicable State or Federal law, except to the extent such law is superseded by this title.

SETTLEMENT PROCESS

SEC. 302. (a) If a claimant seeking to recover for harm caused by a product brings a civil action subject to the provisions of this title against a manufacturer or product seller and such claimant has not filed a valid settlement claim under title II of this Act, the manufacturer or product seller may tender settlement for the net economic loss and any dignitary loss sought by the claimant, pursuant to section 205 (b) or (c) of this Act. Such offer shall be made by certified mail, return receipt requested, within ninety days after service of the claimant's complaint, or within the time permitted pursuant to applicable State or Federal law for the responsive pleading, whichever is longer, except that if such pleading includes a motion to dismiss in accordance with applicable law, the manufacturer or product seller may make such an offer to the claimant within ten days after the court's determination regarding such motion.

(b) The claimant shall determine whether to accept or reject a tender of settlement made under subsection (a) of this section. The claimant shall provide to the manufacturer or product seller written notice of the claimant's acceptance or rejection of such tender by certified mail, return receipt requested, within ninety days after the date of receipt of such tender.

(c) Prior to and in lieu of filing its first responsive pleading in a civil action subject to this title, a manufacturer or product seller which is a defendant in such action and which has not rejected a valid settlement claim submitted by the claimant under title II of this Act may request the claimant to furnish the information specified in section 203(b) of this Act. If the claimant fails to furnish such information within thirty days after the date of such request, the claimant shall be deemed to have rejected the tender of settlement of the manufacturer or product seller, and the provisions of section 303 of this title shall apply.

(d) If a manufacturer or product seller has requested a claimant to furnish information pursuant to subsection (c) of this section, the provisions of section 303 of this title shall apply if evidence is admitted in the civil action on behalf of the claimant which was not provided or made available to the manufacturer or product seller pursuant to this section. The provisions of section 303 of this title shall not apply upon a showing that such evidence could not have been discovered by the claimant in the exercise of due diligence prior to the expiration of the period during which a tender of settlement may be made pursuant to subsection (a) of this section.

(e) Upon a tender of settlement by a manufacturer or product seller pursuant to subsection (a) of this section or a request for information pursuant to subsection (c) of this section, a civil action by a claimant under this title shall be stayed until (1) notification by the claimant pursuant to subsection (b) of this section, or (2) failure by the claimant to furnish information within the

time set forth in subsection (c) of this section, whichever is earlier.

(f) In any case in which a tender of settlement or a request for information is made pursuant to subsection (a) or (c) of this section, the court may, upon motion made at any time prior to the expiration of the appropriate period for response, enter an order extending such period. Any such order shall contain a schedule for discovery of evidence material to the issue of settlement or acceptance of a tender of settlement, and shall not extend such period for more than 30 days. Any such motion shall be accompanied by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely to be discovered is material, and is not, after reasonable inquiry, otherwise available to the moving party.

(g) If a claimant accepts a tender of settlement pursuant to subsection (a) of this section, the court shall dismiss the claimant's civil action, upon motion by any party to the settlement. Subject to the provisions of section 208 of this Act, upon acceptance of such tender of settlement, the claimant is barred from bringing a civil action against any person for damages arising from the same harm, and the manufacturer or product seller may seek reimbursement for the settlement.

RIGHTS UPON TENDER OF SETTLEMENT

SEC. 303. (a) In a civil action subject to this title, if a manufacturer or product seller tenders settlement pursuant to section 302 of this title and the claimant rejects such tender, the provisions of this section shall apply.

(b) If the manufacturer or product seller is found liable in such civil action for harm to the claimant, the damages awarded to the claimant for economic loss shall not exceed the net economic loss of the claimant, and the damages awarded for non-economic loss, other than punitive damages, shall not exceed $250,000. In any case where the law of the State provides that the liability of the manufacturer or product seller may be joint and several, such liability shall be joint and several only to the extent of the net economic loss of the claimant. With regard to all other loss, such a manufacturer or product seller shall not be liable to a claimant for an amount more than its prorate share based upon the comparative fault of all persons responsible for the claimant's harm.

(c) In any such action tried by a jury, the jury shall not be instructed regarding the limitations on damages specified in subsection (b) of this section. The award of damages in any such action shall be reduced by the court in accordance with such limitations.

UNIFORM STANDARDS OF PRODUCT SELLER LIABILITY

SEC. 304. (a) Notwithstanding the provisions of section 301 of this title, in any civil action for injury or damage caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant, (B) the product seller failed to exercise reasonable care with respect to the product, and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty, independent of any express warranty made by a manufacturer as to the same product, (B) the product failed to conform to the warranty, and (C) the failure of the product to conform to the warranty caused the claimant's harm.

(b)(1) In determining whether a product seller is subject to liability under subsection (a)(1) of this section, the trier of fact may consider the effect of the conduct of the seller with respect to the construction, inspection, or condition of the product, and any failure of the seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to the provisions of this title based upon an alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with those warnings and instructions which it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to the provisions of this title except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) A product seller shall be treated as the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

UNIFORM STANDARDS FOR OFFSET OF WORKERS' COMPENSATION BENEFITS

SEC. 305. (a) In any civil action subject to the provisions of this title in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, any damages awarded shall be reduced by the sum of the amount paid as workers' compensation benefits for that harm and the present value of all workers' compensation benefits to which the employee is or would be entitled for the harm. The determination of workers' compensation benefits by the trier of fact in a product liability action shall have no binding effect on and shall not be used as evidence in any other proceeding.

(b) In any civil action subject to the provisions of this title in which damages are sought for harm for which the person injured is entitled to receive compensation under any State or Federal workers' compensation law, the action shall, on application of the claimant made at claimant's sole discretion, be stayed until such time as the full amount payable as workers' compensation benefits has been finally determined under such workers' compensation law.

(c) Unless the manufacturer or product seller has expressly agreed to indemnify or hold an employer harmless for harm to an employee caused by a product, neither the employer nor the workers' compensation insurance carrier of the employer shall have a right of subrogation, contribution, or implied indemnity against the manufacturer or product seller or a lien against the claimant's recovery from the manufacturer or product seller if the harm is one for which a product liability action may be brought under this Act.

(d) In any civil action subject to the provisions of this title in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third-party tortfeasor may maintain any action for implied indemnity or conbribution against the employer, any co-employer or the exclusive representative of the person who was injured.

(e) Nothing in this Act shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any co-employee or the exclusive representative of the person who was injured. Any action other than such a workers' compensation claim shall be prohibited, except that nothing in this Act shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or co-employee, where the claimant's harm was caused by such an intentional tort.

(f) Without regard to when the harm giving rise to the claim occurred, the provisions of this section shall not apply to any person subject to or covered by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.).

UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES

SEC. 306. (a) Punitive damages may, if otherwise permitted by applicable law, be awarded in any civil action subject to this title to any claimant who establishes by clear and convincing evidence that the harm suffered was the result of conduct manifesting a manufacturer's or product seller's conscious, flagrant indifference to the safety of those persons who might be harmed by a product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions or warnings is not of itself such conduct. Except as provided in subsection (f) of this section, punitive damages may not be awarded in the absence of a compensatory award.

(b) The trier of fact shall first determine whether compensatory damages are to be awarded. After such determination has been made, the trier of fact shall, in a separate proceeding, determine whether punitive damages are to be awarded. In determining whether punitive damages are to be awarded, the trier of fact shall consider—

(1) the manufacturer's or product seller's awareness of the likelihood that the serious harm at issue would arise from manufacture or sale of the product;

(2) the conduct of the manufacturer or product seller upon learning that the product caused harm; and

(3) the duration of the conduct and any concealment of it by the manufacturer or product seller.

(c) Punitive damages may not be awarded where the unsafe aspect of the product which caused the claimant's harm complies in material respects with standards, conditions, or specifications established, adopted, or approved by the Congress or by an agency of the Federal Government responsible for the safety of the design, formulation, labeling or performance of a product.

(d) If the trier of fact determines under subsection (a) of this section that punitive damages should be awarded to a claimant, the court shall determine the amount of those damages. In making that determination, the court shall consider—

(1) all relevant evidence relating to the factors set forth in subsection (b) of this section;

(2) the profitability of the conduct to the manufacturer or product seller;

(3) the total effect of other punishment imposed upon the manufacturer or product seller as a result of the misconduct, including punitive damage awards to persons similarly situated to the claimant and the severity of other penalties to which the manufacturer or product seller has been or may be subjected; and

(4) the aggregate effect of such punishment upon the ability of the manufacturer or product seller to pay damages for economic and non-economic loss in pending or future claims involving persons similarly situated to the claimant.

(e) In considering the factors set forth in subsection (d) of this section, the court shall not make an individual award of punitive damages in excess of twice the amount of the claimant's compensatory award. For the purpose only of calculating punitive damages under this subsection, the limitations on the amount of damages specified in section 303(b) of this title shall not apply to the claimant's compensatory award.

(f) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

LIABILITY OF PARTIES

SEC. 307. (a) Any civil action subject to the provisions of this title shall be governed by the principles of comparative responsibility. The comparative responsibility attributed to the claimant shall not bar the claimant's recovery but shall reduce the amount of compensatory damages awarded to the claimant to the extent proportionate to the responsibility attributed to the claimant.

(b) In all such actions involving comparative responsibility, the court shall, unless otherwise agreed by all parties, instruct the jury to answer special interrogatories (or, if there is no jury, the court shall make specific findings) specifying—

(1) the amount of damages the claimant has suffered arising from the harm;

(2) the separate percentages of the total responsibility attributable to all parties, including the claimant, and any nonparties responsible to any extent for the harm; and

(3) those parties, if any, that are joint tort feasors.

(c)(1) The court shall determines the amount of compensatory damages to be awarded to each claimant in accordance with the findings and rulings made under subsection (b) of this section. The court shall enter judgment in accordance with such findings against each party determined to be liable, to the extent of such person's liability, as determined under subsection (b) of this section.

(2) Upon motion made by a claimant not more than one year after the date on which judgment is entered against a joint tortfeasor and appeals have been exhausted in any such action, the court may determine whether any part of the obligation of such joint tortfeasor for compensatory damages is not collectible. Any such part in excess of any collateral benefits which have been received by the claimant shall be reallocated as an obligation to be paid by the other joint tortfeasors in the action according to their respective percentages of responsibility, as determined under subsection (b) of this section.

(d) As used in this section, "joint tortfeasor" means a party to an action subject to this title (other than a claimant) whose conduct, together with that of at least one other party to such action (other than a claimant), resulted in an indivisible harm to the claimant for which there would be no reasonable basis of apportioning responsibility if principles of comparative responsibility did not apply.

UNIFORM STANDARDS OF LIMITATION AND REPOSE

SEC. 308. (a) Any civil action subject to the provisions of this title shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be commenced within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction. If a claimant submits a valid settlement claim to a manufacturer or product seller pursuant to section 203 of this Act, the running of the statute of limitations under this section shall be suspended until notice is given by the manufacturer or product seller in accordance with section 205 of this Act.

(b) Any civil action subject to the provisions of this title shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years of the date of delivery of the product to its first purchaser or lessee who was not engaged in the business of selling or leasing the product or using the product as a component in the manufacture of another product.

(c) Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for that harm.

COUNSEL'S LIABILITY FOR EXCESSIVE COSTS

SEC. 309. (a) In the case of any civil action under this title, any attorney or other person who is admitted to conduct cases in any court of the State in which such civil action is pending and whose conduct in the course of such action is calculated to delay resolution of the action, or is determined by the court (after consideration of the circumstances) not to be in good faith, shall be subject to pecuniary sanctions to be imposed by the court. Any such sanction shall be equal to an amount not less than the total amount of court costs, fees, and expenses (including attorney's fees) reasonably attributable to the conduct.

(b) Notwithstanding any other provision of law, if the court finds that a civil action under this title was commenced without a good faith belief by the attorney representing the claimant in such action that there was a reasonable basis in law and in fact for recovery of the relief requested, or that such action was commenced merely for purposes of achieving a monetary settlement where there was no reasonable prospect for an award of damages, such attorney shall be liable for costs, fees, and expenses, including attorney's fees reasonably incurred to respond to or otherwise resist such action.

RECORD RETENTION

SEC. 310. (a) Any claimant and any person who is a party to a civil action under this title who anticipates bringing such an action, or who has notice that he or she may be made a party to such an action shall retain all material, documents and other data (including, in the case of the claimant, the product alleged to have caused the claimant's harm) within that person's possession, custody or control that are relevant or may lead to the discovery of evidence relevant to the claim or action.

(b) In any civil action under this title, if the court determines that a party has willfully disposed of, destroyed, concealed, altered or removed any material, document or data in violation of subsection (a) of this section or any State or federal rule, regulation or statute requiring the retention of such material, document or data, there shall be a rebuttable presumption that the facts to which the material, document or data relate are established in a manner adverse to the position of the party who has committed the violation. The court shall assess a civil penalty against such party in an appropriate amount not less than $1,000 and order such party to pay the other party's costs, including reasonable attorney's fees, incurred in proving the violation.

(c) In any other civil action under this title, in which the court determines that a party has nonwillfully violated subsection (a) of this section or any State or Federal rule, regulation or statute requiring the retention of such material, document or data, and that no other means are available to establish the facts to which the unavailable material, document or data relate, the court may, in the interest of justice, establish a rebuttable presumption that the facts to which the material, document or data relate are, for the purposes of such action, established in a manner adverse to the party who has committed the violation.

ADMISSIBILITY OF CERTAIN EVIDENCE

SEC. 311. Evidence that a manufacturer or product seller has made a settlement offer or payment to a claimant for harm caused by a product pursuant to this Act shall not be admissible in any civil action brought under or subject to this title or otherwise by any claimant.

SUBSEQUENT REMEDIAL MEASURES

SEC. 312. In any civil action under this title, evidence of any measure taken by a manufacturer or product seller after the occurrence of a claimant's harm which, if taken previously, would have made the harm less likely to occur is not admissible to

prove liability. Such evidence may be admitted when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Amend the title so as to read: A bill to regulate interstate commerce by providing for a uniform product liability law that affords persons harmed by products equitable and expeditious payment of their damages, and for other purposes.

● Mr. DANFORTH. Mr. President, last December S. 1999, the Product Liability Voluntary Claims and Uniform Standards Act, was introduced. Today, I rise to introduce an amendment in the nature of a substitute to that measure and ask unanimous consent that this amendment and the accompanying section-by-section analysis be printed in the RECORD immediately following these remarks.

This new proposal is a revision of S. 1999 that addresses concerns about the bill raised at 2 days of hearings on this product liability reform measure. S. 1999 attempted to combine uniform standards for liability with a new alternative claim system for swifter, more certain recovery of net economic loss by those injured by defective products. The overall objectives of S. 1999 were to provide an alternative to traditional litigation that would assure such recovery for those injured by defective products, reduce transaction costs for all those involved, and provide greater certainty with respect to the rights and responsibilities of product manufacturers, sellers, and consumers.

Let me say at the outset that this amendment is only a "draft." It is intended to be a framework on which to build a consensus. I fully expect further changes, and I invite ideas for changes from my colleagues.

This amendment to S. 1999 has the same objectives, but differs somewhat in approach. Instead of the expedited claim system of S. 1999, this proposal would establish a simpler alternative that would promote settlement of most product liability claims without extensive litigation. The overall goal is to promote such settlements by imposing limitations on recovery in cases where there is a legitimate and timely offer of net economic loss—those actual losses not reimbursed by other sources—plus any "dignitary loss" up to $250,000—that is, loss for pain and suffering in cases involving the most extreme and severe injuries.

Some of the general reforms of S. 1999 have been retained but the overall focus shifts from liability standards for claims and litigation to incentives for settlement. The basic idea remains to get as many people as possible out of the courts and into a simple alternative settlement system that makes injured persons whole on an expedited basis and without the costs associated with prolonged litigation.

This amendment creates incentives for both plaintiffs and defendants to settle product liability claims quickly either prior to or at the beginning of litigation. A victim of a product-related injury has a choice of utilizing an expedited settlement claim system under title II of this proposal or traditional litigation under title III. If the title II settlement system is utilized, the claimant may seek recovery for net economic loss and dignitary compensation for severe and permanent injuries; however, such dignitary or noneconomic loss may not exceed $250,000.

The manufacturer or product seller has 90 days to respond to such a claim. If the manufacturer pays the claim, no recovery for damages arising from the same harm may be sought in a civil action. If the manufacturer or product seller agrees to pay the claim but disputes the amount, the matter goes to binding arbitration. If the manufacturer or product seller rejects the claim, the claimant may seek recovery through litigation. If the claimant prevails, the manufacturer or product seller who rejected the claim is required to pay an additional percentage of the judgment as a penalty.

If a person chooses to litigate without using the title II expedited settlement system, the manufacturer or product seller defendant may offer to pay the net economic loss and dignitary loss sought by the claimant. A manufacturer or product seller who disputes the amount sought by the claimant may offer to pursue arbitration as to the amount to be paid. If the plaintiff accepts the offer of payment or agrees to arbitration, the case is dismissed and the claimant is barred from seeking recovery for damages arising from the same harm from any other person.

If an offer of settlement is rejected in these circumstances, the claimant's recovery would be limited in litigation to net economic loss plus up to $250,000 for any noneconomic losses excluding punitive damages. Joint and several liability could be applied only to the claimant's net economic loss. With regard to all other loss, the manufacturer or product seller would be liable only to the extent of its proportionate responsibility for the harm.

The expedited settlement procedures established by this amendment are designed to compensate the claimant—something that the tort system today rarely does. These procedures would permit the claimant to recover his net economic loss and dignitary loss.

Net economic loss includes reasonable expenses incurred for reasonably needed medical and rehabilitation care and services, lost income from work that the claimant would have performed, reasonable expenses incurred in obtaining ordinary and necessary family services that the claimant would have performed, lost earnings of a deceased person, and reasonable expenses incurred in preparation and submission of the claim, including an attorney's fee. Such economic loss is reduced by the total amount paid or payable by reason of the same harm from any other source, including workers' compensation and private insurance coverage.

Dignitary loss, which may not exceed $250,000, includes mental anguish associated with the death of a parent, child or spouse; permanent and gross disfigurement; permanent loss of a limb or organ; or serious and permanent impairment of a bodily function.

The amendment also includes uniform standards for the award of punitive damages. Punitive damages are limited to 2 times the plaintiff's compensatory damages, and may only be awarded if the plaintiff establishes by clear and convincing evidence that the harm suffered was the result of conduct manifesting a conscious flagrant indifference to the safety of those persons who might be harmed by a product. Such damages may not be awarded in the absence of compensatory damages. While a jury may determine whether compensatory and punitive damages are to be awarded, the court shall determine the amount of punitive damages. Punitive damages may not be awarded where the unsafe aspect of the product that caused the claimant's harm complies with Government specifications, standards, or conditions.

A comparative responsibility provision restricts joint and several liability to those few product liability cases where there is no other way of compensating the plaintiff for his loss. If, after the claimant attempts to collect proportionate shares of his loss from each joint tort-feasor, a defendant is found to be judgment-proof, his share of the damage will be divided among the other defendants according to their percentage of responsibility. However, before this sum is apportioned among the other defendants, it shall be reduced by the amount of any collateral benefits that have been received by the claimant. This provision will eliminate the need for costly contribution suits.

Both the title II claims system and title III traditional litigation are subject to a uniform statute of limitations that runs for 2 years from the discovery of the harm and its cause. In addition, both the title III claims system and title III are subject to a 25-year statute or repose for capital goods, except in cases involving toxic harm.

Mr. President, the virtue of this proposal is that it will reduce the high costs of litigation without depriving injured victims of their rights. Instead,

it provides victims with faster, more certain and more complete recovery while addressing defendants' ligitimate concerns about rising litigation and insurance costs.

I regard this proposal as a fair and viable framework for product liability reform; however, more work needs to be done and many of the provisions of this draft require further revision. It is my hope that in the weeks ahead, all those seeking product liability reform will be able to join together in this revision process and that we will be able to formulate a product liability reform bill along these lines that can be supported not only by the Senate Commerce Committee but by the Senate as a whole.

Mr. President, I ask unanimous consent that a section-by-section analysis of the amendment be printed in the RECORD.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF AMENDMENT TO S. 1999

TITLE I

Section 101 sets out the short title of the Act as the "Product Liability Reform Act."

Section 102 sets out definitions of certain terms used in the Act. Most importantly, (1) "dignitary loss," which may not exceed $250,000, includes pain and suffering or mental anguish associated with the death of a parent, child or spouse; permanent and gross disfigurement; permanent loss of a limb or organ; or serious and permanent impairment of a bodily function; (2) "net economic loss" includes reasonable expenses incurred for reasonably needed medical and rehabilitation care and services, lost income from work that the claimant would have performed, reasonable expenses incurred in obtaining ordinary and necessary family services that the claimant would have performed, lost earnings of a deceased person, and reasonable expenses incurred in preparation and submission of the claim, including an attorney's fee. Such economic loss is reduced by the total amount paid or payable by reason of the same harm from any other source, including workers' compensation and private insurance coverage. Attorney's fees may be on a contingent basis but, for purposes of determining net economic loss, shall be calculated solely on the basis of a reasonable hourly rate. (3) "Product" means any object, substance, mixture, or raw material which is capable of delivery, which is produced for introduction into trade or commerce, which has intrinsic economic value, and which is intended for sale or lease to persons for commercial or personal use; for the purposes of this Act, the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law. (4) "Harm" means personal physical illness, injury, or death of a claimant; mental anguish or emotional harm of the claimant caused by or causing the claimant's personal illness or injury; and physical damage to property other than the product itself. The term does not include commercial loss.

Section 103 states the extent to which the Act preempts state law. The Act governs any civil action brought against a manufacturer or product seller, on any theory, for personal injury or damage caused by a product. A civil action for commercial loss or for loss or damage to a product itself is not subject to this Act and shall be governed by applicable commercial or contract law.

Section 104 provides that in an expedited settlement, payment shall consist of payment of past losses and an enforceable promise to pay future net economic losses as incurred, if any party so requests. Otherwise, it may take the form of a lump sum or an agreement to pay by means of an annuity.

Section 105 provides that the Act shall take effect 90 days after its enactment.

TITLE II

Section 201 provides that a person who has suffered harm caused by a product may submit an expedited settlement claim to the manufacturer or product seller. A person who submits such a claim may not sue any other party for the same harm if the manufacturer or product seller agrees to pay the claim. No claim may be brought if any civil action is pending to recover damages for the same harm.

Section 202 specifies that an expedited settlement claim may be submitted only for the claimant's net economic loss, or any dignitary loss, or both.

Section 203 provides that an expedited settlement claim must be submitted by certified mail, return receipt requested. Such a claim must be accompanied by reasonable proof that the manufacturer made the product that caused the harm, as well as by full information about the circumstances in which the harm occurred, copies of all bills for which payment is sought, copies of medical records relating to the harm, a statement of lost income for which recovery is sought, the names and addresses of those who witnessed the farm, and information about other sources of compensation paid or payable to the claimant for the harm incurred.

Section 204 provides that a claimant must cooperate with the manufacturer or product seller in its investigation of the claim, update all medical information and other data relevant to net economic loss, allow the manufacturer to have access to all relevant medical records and information, submit to a physical or mental examination, provide the names of experts upon whom the claimant relies, and permit the manufacturer or product seller to inspect or test the product alleged to have caused the harm, if it is still within the control of the claimant.

Section 205 requires a manufacturer or product seller who has received a valid settlement claim to respond within 90 days. If it is willing to do so, the manufacturer or product seller may pay the claim in full. If the manufacturer or product seller disputes the amount of loss that is payable, it may pay the undisputed portion of the claim and notify the claimant of his rights under section 206. If the manufacturer or product seller decides that it will not pay, it shall notify the claimant of his rights under section 207. Any other person provided with notice by the manufacturer or product seller that a valid settlement claim has been submitted shall, within 180 days of receipt of such notice, determine whether to contribute its proportionate share of such claim.

Section 206 establishes binding arbitration proceedings for the resolution of disputes over the amount of payable loss. With respect to any dignitary loss, the arbitrator may award the claimant only either the amount sought by the claimant or the amount offered by the manufacturer of the product seller. Arbitration under this section shall be the claimant's sole Title II remedy where a manufacturer or product seller declines to make full payment of an expedited settlement claim because of a dispute over the amount of claimant's loss.

Section 207 provides that if a manufacturer or product seller refuses to pay a valid settlement claim or fails to respond, the claimant may bring a civil action subject to the provisions of Title III of the Act. If the claimant prevails, and the manufacturer or product seller who rejected the claim is found liable, the court shall award additional damages of 25 per cent of the judgement plus one per cent of the judgment per month for each month from the rejection until the entry of the claimant's judgement.

Section 208 provides for reimbursement of a manufacturer or product seller who has paid a settlement by other persons responsible for the claimant's harm. If such other persons refuse to participate in the settlement, the manufacturer or product seller who paid the claim may sue and recover one and a half times the amount of the subrogation recovery, unless the person against whom the subrogation right is asserted has offered to submit the dispute to arbitration.

Section 209 provides that, if the product is a capital good alleged to have caused harm which is not toxic harm, any settlement claim must be submitted within 25 years of the date of delivery of the product to its first purchaser.

Section 210 provides that no antitrust law shall preclude manufacturers or product sellers from establishing collective facilities for processing claims which are submitted under this title title.

TITLE III

Section 301 provides that civil actions for harm caused by a product shall be governed by applicable State or Federal law, except to the extent that such law is superseded by this title.

Section 302 provides that if a claimant brings suit without filing a valid settlement claim under Title II, the defendant manufacturer or product seller may tender settlement of the net economic loss and any dignitary loss sought by the claimant, or may offer to arbitrate any dispute over the amount of such loss. The claimant must respond to such tender within 90 days. In lieu of its first responsive pleading, a manufacturer or product seller who has not rejected a valid settlement claim may request the claimant to furnish the information specified in section 203. If the claimant fails to respond, or later introduces evidence which he knowingly failed to provide in response to the request, he shall be deemed to have rejected the settlement offer, and the provisions of section 303 shall apply. If the claimant accepts the settlement offer, his civil action shall be dismissed and he shall be barred from bringing a civil action against any person for the same harm. The manufacturer or product seller may seek reimbursement for the settlement.

Section 303 provides that if the claimant rejects the settlement offer, a $250,000 cap would be placed on the manufacturer's or product seller's liability for noneconomic losses (excluding punitive damages). The claimant's award for economic losses would be reduced in the amount of any insurance or other compensation he has received for the same harm. Joint and several liability would apply only to the extent of such net economic loss; with regard to all other loss,

the manufacturer or product seller would be liable only to the extent of its proportional responsibility for the harm.

Section 304 establishes a uniform standards of product seller liability. A product seller other than a manufacturer is liable only if the claimant's harm was proximately caused by either the seller's own lack of reasonable care or a breach of the seller's own express warranty. However, a product seller shall be liable as if it were the manufacturer of the product if the manufacturer is not subject to service of process or if the claimant would be unable to enforce a judgment against the manufacturer.

Section 305 establishes uniform standards for offset of workers' compensation benefits. Under current workers' compensation statutes, the employer pays workers' compensation benefits in every workplace injury case. This section does not affect workers' compensation statutes, but provides that the workers' compensation system and the tort system are kept separate. The workers' compensation recovery of a claimant would be subtracted from his tort recovery, and the employer would not be permitted to place any subrogation lien on the tort recovery. Likewise, no action for implied indemnity or contribution could be maintained against the employer of the person who was injured.

Section 306 establishes uniform standards for award of punitive damages. Punitive damages are limited to twice the plaintiff's compensatory damages, and may only be awarded if the plaintiff establishes by clear and convincing evidence that the harm suffered was the result of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by a product. Such damages may not be awarded in the absence of compensatory damages. While a jury may determine whether compensatory and punitive damages are to be awarded, the court shall determine the amount of punitive damages. Punitive damages may not be awarded where the unsafe aspect of the product that caused the claimant's harm complies with government specifications, standards, or conditions.

Section 307 establishes uniform standards of comparative responsibility in product liability actions. Application of joint and several liability is restricted to those few cases where there is no other way of compensating the plaintiff for his loss. If, after the claimant attempts to collect proportionate shares of his loss from each joint tortfeasor, a defendant is found to be truly judgement-proof, his share of the damages will be divided among the other defendants according to their percentage of responsibility. However, before this sum is apportioned among the other defendants, it shall be reduced by the amount of any collateral benefits that have been received by the claimant. This provision will eliminate the need for costly contribution suits.

Section 308 establishes uniform standards of limitation and repose. All product liability actions are subject to a uniform statute of limitations that runs for two years from the discovery of the harm and its cause. In addition, both the claim system and Title III are subject to a 25-year statute of repose for capital goods, except in cases involving toxic harm. "Capital goods" do not include motor vehicles, or aircraft and other conveyances used primarily to transport passengers for hire.

Section 309 imposes penalties on attorneys who act in bad faith, with intent to delay, or who file suit for purposes of achieving a monetary settlement where there was no reasonable basis for recovery. Such attorneys shall be liable for all the costs reasonably attributable to the conduct, including court costs, fees, expenses, and attorney's fees.

Section 310 establishes record retention requirements. Any party to a civil action who willfully destroys or conceals any relevant materials shall be fined not less than $1000 and ordered to pay the other party's costs, including attorney's fees, incurred in proving the violation, and there shall be a rebuttable presumption that the facts to which the record related are adverse to the position of the party who committed the violation. If a party nonwillfully destroys relevant materials, the court may, in the interest of justice, establish a rebuttable presumption that the facts to which the record related are adverse to the position of the party who destroyed the materials.

Section 311 provides that evidence that a manufacturer or product seller has made an expedited settlement offer or payment to a claimant shall be inadmissible in any other action.

Section 312 restricts the introduction into evidence of remedial measures taken after the claimant's harm. Such evidence is not admissible to prove liability, but may be used for another purpose, such as impeachment.●

NOTICES OF HEARINGS

SUBCOMMITTEE ON DEFENSE

Mr. STEVENS. Mr. President, I would like to announce a Defense Appropriations Subcommittee hearing on AIDS Policy, Testing, and Research in the Department of Defense. On Thursday, May 15, 1986, at 10 a.m., in room SD-192, we will receive testimony from Dr. William L. Mayer, the Assistant Secretary of Defense for Health Affairs, and Dr. Philip K. Russell, the Deputy Commander of the U.S. Army Medical Research and Development Command, on this very serious health problem.

This hearing will focus particularly on DOD's AIDS testing and research programs which address the threat of this devastating disease to our men and women in uniform and to our country's military readiness. The committee is very concerned about the unique problems to military personnel associated with HTLV-III infection. Our military members must deploy worldwide, often to areas with little or no medical support, and there is a critical need to protect blood supplies.

The committee looks forward to this opportunity to receive the most current information available regarding the Defense Department's efforts in this area, and invites all those interested to attend the hearing.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, the Committee on Governmental Affairs will hold a hearing on Thursday, May 15, at 9:30 in SD-342 on S. 2197, the Federal Employees' Optional Early Retirement Act of 1986. For further information, contact Dick Schreitmueller of the committee staff at 224-4751.

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

Mr. WALLOP. Mr. President, I would like to announce for the information of the Senate and the public the rescheduling of a hearing before the Subcommittee on Public Lands, Reserved Water and Resource Conservation of the Committee on Energy and Natural Resources from June 12 to Monday, May 19, 1986, at 10 a.m. in room SD-366 of the Senate Dirksen Office Building, Washington, DC, 20510. Testimony will be received on S. 2204, to amend the Land and Water Conservation Fund Act of 1965, as amended, to permit the use of park entrance, admission and recreation use fees for the operation of the National Park System, and for other purposes.

Those wishing to testify should contact the Subcommittee on Public Lands, Reserved Water and Resource Conservation of the Committee on Energy and Natural Resources, room SD-308, Dirksen Senate Office Building, Washington, DC, 20510. Oral testimony may be limited to 3 minutes per witness. Written statements may be longer. Witnesses may be placed in panels, and are requested to submit 25 copies of their testimony 24 hours in advance of the hearing, and 50 copies of the day of the hearing.

For further information, please contact Patty Kennedy or Tony Bevinetto of the subcommittee staff at (202) 224-0613.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. LATCH. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Monday, May 12, 1986, in order to conduct a hearing on the nomination of Lynne Chaney to be Chairman of the National Endowment for the Humanities.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

SOVIET EMIGRATION POLICY IS ABSURD

● Mr. WALLOP. Mr. President, for the past several weeks the United States has fielded a delegation to an international meeting of the states which signed the Helsinki Final Act. That meeting is taking place in Bern, Switzerland, and its purpose is to discuss the progress in human contacts between the Western democracies and the Soviet bloc states.

The United States delegation has had an uphill struggle at that meeting to obtain any Soviet cooperation in discussing its human rights record. The Soviets insisted on closing the meeting to the media and the public and then complained in the international press that the United States delegation was being aggressive when it pushed for open debate on Soviet compliance with the human contacts provisions of the Final Act of Helsinki, which the U.S.S.R. signed in 1975.

One reason, Mr. President, is that the Soviet Union and its clients absolutely refuse any open discussion of their emigration policies, even when they are obligated by treaty to do so, as they are at this CSCE Conference at Bern. And the Soviet Union ignores our exhortations concerning its emigration policy in every instance, including such cases as those of Dr. Andrei Sakharov, who still suffers in Gorky in KGB hands for his legitimate human rights activities under the Helsinki Final Act.

I ask that the following article from the May 6 edition of the New York City Tribune be reprinted in the RECORD as a reminder of the absurdity of Soviet emigration policy.

The article follows:

LOGIC BEHIND ABSURDITY IN U.S.S.R.'S EMIGRATION POLICY

(By Lev Alburt)

(A few days ago, my friend Boris Gulko, a former Soviet chess champion and a "refusenik" for the past seven years, phoned me from Moscow. He told me: "I'm very grateful to all who organized and publicized the recent chess tournament in Bern supporting my right to emigrate." Following is an update on remarks I gave March 19 at a press conference held jointly with Rep. Jack Kemp, Rep. Jim Courter and Edward Lazansky, director of the Sakharov Institute, for the purpose of questioning Soviet emigration policy and in particular to highlight the situation of the Gulko family.)

According to Comrade Michael Gorbachev, Andrei Sakharov must remain in Russia because he knows Soviet military secrets. These secrets somehow haven't become obsolete in 20 years.

Boris Gulko and his wive Anna, both former Soviet chess champions, never have had access to any secrets, including those of the mysterious game of chess. For more than seven years they have been trying desperately to receive permission to leave the Soviet Union—all in vain. The Gulkos have a 7-year old son, David, who was born a refusenik.

The brave struggle of the Gulkos, their protests, their hunger strikes, have produced a lot of sympathy in the West. Why, you may ask, wouldn't Soviet leaders, from Brezhnev to Gorbachev, let them go and do what they want to do, namely, play chess and raise their son as a free human being? After all, the USSR spends millions of dollars annually on chess for propaganda efforts, and cases such as Gulko's to a great extent negate these efforts. To answer this questions to understand the hidden sense behind the seemingly absurd emigration policy of the USST, we should take a brief look at the very basics of the Soviet system.

Believe it or not, Soviet "socialism" is simply a code word for state slavery, based almost entirely on terror or on a threat of terror. In order to survive, not to mention obtaining the simple pleasures of life, Soviet "citizens" must behave as if they were devoted servants of their beloved masters of the Politburo, or, in Soviet newspeak, as if they are "Soviet people" who, by definition, love their Communist Party and its general secretary—and have no other goals but to promote the interests of the Socialist Motherland.

To those who find this behavior strange, and who prefer to believe that these backward Russians have been brainwashed by communist propaganda, I would remind them how some hostages of Arab terrorists became aware of the merits of the Palestinian cause—only to return to a normal state of mind immediately after being released.

In order to worship what they hate and to betray what they love, Soviet people must always remember that they are destined to live and die in their country-prison, and thus must learn to adopt to this reality. Ergo, there must be no emigration, and by the way, no religion as well—in other words, no hopes for escape in this life or even in the life hereafter.

When, in the early 1970s, the Soviet rulers had to allow a small fraction of certain ethnic groups (Jews, Armenians, Germans) to emigrate in order to receive Western credits, technology, grain, unilateral disarmament—in short, detente—they were fully aware of the negative effects that this emigration, this minor leak, would have on their system and did their best to minimize these effects.

Haven't you ever asked yourself why a certain medical doctor or a Ph.D. in physics, has been allowed to leave Russia only three months after applying for an exit visa, when an old man or woman not productive any longer, indeed, almost a burden to the state, has been receiving "refuses" year after year? Illogical, you may say—not at all. If the Soviet government allows certain groups of its subjects to leave Russia as they please, these groups would inevitably become virtually independent, no longer forced to play according to the communist rules of the game—and thus a daring example for all.

To ask Gorbachev, for instance, to grant a free exit to all those over 60 is to ask him to put his already shaky empire in great jeopardy, in fact, to dismantle it.

So, under pressure from the West, the Soviet government allows some individuals to go free—and here I should pay a tribute to those Americans who made this wonder of the second Exodus possible, among them Congressman Jack Kemp and that great champion of Soviet people Sen. Henry Jackson of Jackson-Venik fame. But the rules were intentionally made such as to allow no rules, no predictability at all.

As a result, Dr. Edward Lozansky, a physicist and brilliant organizer, is now in America as a director of the Andrei Sakharov Institute, instead of working in some Moscow lab on a Soviet version of Star Wars—while chess players Boris and Anna are challenging the empire in a struggle for their lives.

Can we help Boris and Anna? Definitely yes, and indeed, by our very presence here we are already helping them, protecting them with a shield of public awareness.

Comrade Gorbachev can not let the Gulkos go without raising hopes to others who wish to emigrate—the 7-year-long ordeal of the Gulko family isn't an encouraging example. Just let's make it absolutely clear that Boris and Anna Gulko, their friend Vladimir Pimonov, and all other refuseniks and prisoners are not forgotten, and hopefully they will be released—as Anatoly Shcharansky was.

By the way, we planned to call our tournament "Salute to Gulko and Shcharansky"—Shcharansky is a chess master and probably he would now be a grandmaster if he had not chosen mathematics as his profession.

I hope Gulko, too, is freed soon. The Soviet government needs us—our grain, in particular—more than ever. We should ask Gorbachev to pay for it by getting out of Afghanistan and, yes, by releasing Sakharov and Gulko.

Helping those brave people in faraway Russia is more than a human rights act, more than caring for those in need. Our solidarity makes oppressed people stronger and more determined, and inevitably makes their rulers weaker, their society more open and thus less dangerous for us.

The people of Russia, the people of all nations enslaved by communism, are our natural allies.

Together we will win. Twentieth century slavery will not endure to the 21st century.

I believe that we'll be generous in our victory. The American government will give immunity and asylum to the Gorbachevs and even Congressman Solarz wouldn't ask nasty questions about how many billions in real estate this couple owns in New York City.●

HISTORIC PRESERVATION WEEK

● Mr. ABDNOR. Mr. President, this week is National Preservation Week and across America in large cities and small farm towns, Americans will join in celebrating the 20th anniversary of the National Historic Preservation Act.

The theme for 1986, is "Celebrate Historic Places—Our Past for Our Future." It is a time to look back with pride in the progress which the historic preservation movement has made over the past 20 years and to look to the future with unbridled optimism.

In my own State of South Dakota we are seeing even greater activity in discovering the past history of our State. I recently received a letter from Mr. L. Adrien Hannus, director of the Archeology Laboratory of the Center for Western Studies at Augustana College, bringing me up to date with the activities which are underway in the Badlands of South Dakota to preserve and protect an important archaeological site where people belonging to the "Clovis" culture killed and butchered Mammoths. Mr. Hannus reminded me that this important find could not have been developed without help from the Historic Preservation Fund.

I am proud of the contribution which the National Trust for Historic Preservation has made to our Nation over the past two decades. Under the able leadership of Mr. J. Jackson Walter, we are seeing a broad based movement to plan for the next two

decades as well. We must not rest on past accomplishments, but forge ahead to consolidate the gains which we have made and move toward an even more aggressive national preservation program.

Preservation mean more than preserving and rehabilitating old buildings. It means preserving our past. I salute the work of the trust and also the dedicated efforts of the Historic South Dakota Foundation, Inc. and the Historical Preservation Center at the University of South Dakota to preserve and protect "our past for our future."●

A BAD TRADEOFF IN CHINA: ESSAY BY JENNIFER ROBINSON OF CASPER, WY

● Mr. WALLOP. Mr. President, Jennifer Robinson of Casper, WY, a talented high school student, recently won a nationwide essay contest conducted by the Friends of Free China. The Friends of Free China sponsored the essay contest on the topic, "How Freedom Affects Progress."

I would like to share this thoughtful, prize-winning essay with my Senate colleagues. The essay is timely indeed and points out the advantages of the free, democratic system in Taiwan as compared with the Communist People's Republic of China.

Mr. President, I applaud Jennifer Robinson's fine analysis of what is at stake in China and I ask that her outstanding and praiseworthy essay be printed in the RECORD.

The essay follows:

A BAD TRADE-OFF

They were forced to flee from their homeland, threatened with invasion by neighboring countries, and de-recognized as a nation by most of the world. Yet the Republic of China has risen above these obstacles to form one of the most highly developed nations in the world. Paul Hsu was right when he said, "We have proof that we have a working system, one that other countries would like to imitate." And countries do try to imitate Taiwan's system but with limited success. What accounts for Taiwan's remarkable rise in progress which even their counterparts in Communist China cannot duplicate? It is the elements of freedom. Economic, personal, and political freedom creates a winning combination for progress.

In comparing the economic situations of Mainland China and Taiwan, the results are astounding. In Taiwan, "annual per capita income stands at $2,673.00, more than ten times that of the People's Republic of China."(1) Taiwan is at the forefront of the economic world, while Communist China, with its backward and ill-equipped factories, retains a low technological and quality level. As one of the "Four Tigers", known for the dynamic growth, the Republic of China has prospered by exporting to the U.S., becoming America's sixth-largest source of imports and her sixth-largest over-all trading partner.(2) In fact, Taiwan's industrial output has been so successful that they are now moving up into a higher-quality bracket and are building for themselves a reputation for producing maximum-qualtiy goods. New markets are being planned to boost the industry. Besides an already well-developed $400 million-a-year auto parts industry, Taiwan is this year producing its first wholly Taiwanese-designed automobile for exportation. It is freedom in the marketplace that triggers this individual initiative to produce new and better products.

Although falling exports to the U.S. markets, mainly in the high-tech sector, are curbing their technological growth rates, "Taiwan's economy is still expected to grow 6.3% this year, down from 11% last year. That would be a pretty healthy rate anywhere else in the world, but it's shocking to Asians who suffer from "growth mania", says economist D. K. Patel.(3) The current economic indicators are low by Taiwanese standards only because of its remarkable record over the past twenty-five years.(4) Taiwan's economic performance still ranks sixth among 119 nations and tops all other developing countries. "The indications are that the Republic of China's economy in 1986 is taking a turn for the better, and its exports are also expected to increase by 5.2 percent over last year's.(5)

Across the strait in the Communist People's Republic of China, they are casting envious glances toward the flourishing tiny island. Why is it that Communist China keeps watching Taiwan? The answer, according to Yu-ming Shaw, is clear: "Like them, we are Chinese, but we're a success and free. Our system works. Theirs is a failure. We make them look bad." And the Republic of China does make the Mainland look bad. This enterprising island far outshines what it left behind. The People's Republic of China has every right to be jealous of the great strides Taiwan has taken, which they cannot imitate. Communist China is still a developing country, limited by the absence of freedom. Agriculture is still old and out-dated in its methods, with yields that are insufficient to feed its population. The living standards of the two nations are similarly astonishing in contrast. Shoppers in the People's Republic of China find only sparse supplies on the store shelves.(6) In living standards it ranks 112th of the countries of the world. The Republic of China on Taiwan, on the other hand, boasting one of Asia's highest standards of living, offers a plenteous selection of food and goods.

Economic freedom is a necessity for the progress of a country, but even that cannot be accomplished without personal freedoms. "For economic progress to continue, everyone must have a chance to share in it."(7) The Taiwanese people strive to better themselves and are urged to do so without government restrictions. They are expected to try to succeed regardless of the circumstances and to reach higher social and economic positions and status in their careers. This is in sharp contrast to the people of Communist China who have no choice but to remain on the same socio-economic level throughout life. The government there interferes with the people's private lives. Families are forcibly limited to one or two children and abortions are mandatory for a third. Careers are picked for the individual by the government. As one young Chinese girl stated when asked what she would do upon completing her studies: "Teach of course. I don't have a choice."(9) To have an economy and a nation that works, people must be able to own their own homes, their own land, and their own means of production. They must be free to practice their religions and to observe their country's traditions.(10) This is what Taiwan has and more besides. They have strong family ties and a fierce feeling of patriotism and national pride.

Rapid economic growth, such as the Republic of China's, usually tears apart the political grounding of a society, but their one powerful party has been in control for over four decades—the Kuomintang. Ramon Meyers in *The Miracle of the ROC* on Taiwan said, "No leadership or political party, so defeated, has been able to pull itself up by its boot straps and progress from such lowly straits to develop a society of vitality and energy as has the Kuomintang on Taiwan." As the dominant Nationalist party, the Kuomintang controls most of the government, but there are other political groups as well. Groups of politicians who do not belong to the Nationalist party have still been elected to serve in the government. On the other hand, in Communist China there is only the Communist party ruling with no opposition allowed.

Taiwan's climb to the top has not been easy, but it has been a steady one. It's no wonder that Communist China has now set up a drive for the reunification of themselves with Taiwan. But the Republic of China on Taiwan isn't buying it. That is wise. "The belief that the People's Republic of China is in the process of renouncing communism permanently in favor of capitalism and Western life-styles may be popular in the West, but inside China the state media are saying just the opposite. They say that the "open-door" is necessary to acquire Western technology, but stress, "for cardinal principles": "keeping to the socialist road, upholding the people's democratic dictatorship, maintain the leadership of the Communist Party, and adhering to Marxism-Leninism and Mao Tse-Tung thought." (11) As James Shen said in referring to Communist China's declaration that its handling of Hong Kong would serve as a blueprint for the inevitable reunification with Taiwan, "We've fought communism so long it would illogical to give up now when we're better off than ever. Could any sensible person expect us to trade what we have for the mirage of a blueprint?" Certainly, after comparing the Republic of China on Taiwan with Communist China, it is clear to see that freedom and the progress it brings would indeed be a bad trade-off for a system that does not work.

ENDNOTES

1. "Taiwan Bounces Back Stronger Than Ever." *U.S. News and World Report* (March 5, 1984), p. 38.

2. "The 'Four Tiger' Start Clawing at Upscale Markets." *Business Week* (July, 1985), p. 136.

3. "The 'Four Tigers' Fall Prey to the High-Tech Slump." *Business Week* (July, 1985), p. 44.

4. *Taiwan Post Report.* 1983.

5. "Local Economy is on the Upswing But World Wide Trends are Gloomy." *The Free China Journal* (February 3, 1986), p. 1.

6. "Taiwan Bounces Back Stronger Than Ever." *U.S. News and World Report* (March 5, 1984), p. 38.

7. "The Miracle of the ROC on Taiwan." Ramon Meyers. *Vital Speeches of the Day* (September 20, 1984), p. 122.

8. Yue-Ming, Shaw. "Expanding Foreign Relations." *The Free China Journal* (February 3, 1986), p. 2.

9. "Educators Tour China." *The Wyoming Educator* (September/October, 1985).

10. "Fighting for the Future of Angola." *Insight* (January, 1986), p. 74.
11. "The Chinese Democracy" *Insight* (February 3, 1986), p. 37.●

A TAX REFORM BILL WORTHY OF THAT NAME

● Mr. QUAYLE. Mr. President, 4 years ago this month, I introduced the SELF tax plan of 1982, the first comprehensive tax reform proposal in the Senate. Last Wednesday, Chairman BOB PACKWOOD, with the unanimous support of the Finance Committee, completed drafting a sweeping comprehensive tax reform measure. I am proud to say that the bill reported by the Finance Committee has the same basic objectives of my SELF plan—simplicity, efficiency, low rates, and fairness—which I believe should, and must, guide the revision of our tax system that the American people deserve and demand and that the U.S. economy requires.

I believe that the Finance Committee's plan, which the majority leader has announced will be debated by the full Senate in June, is a major improvement over the earlier House-passed bill. Where the House bill has four rate brackets, with a top rate of 38 percent, the Finance Committee measure has two rate brackets, with a 27-percent top rate. While the House bill provides for a 36-percent corporate rate, the Senate version provides for a 33-percent rate. The House bill increases the tax burden on American business by $140 billion and discourages capital investment, but the Senate proposal provides a tax system that encourages economic efficiency and investment decisions based on business considerations rather than skews in the Tax Code. Although it may include certain specific provisions with which I do not totally agree, or that differ with those of my own SELF tax plan, I believe that the measure the Finance Committee has reported is a tax reform bill truly worthy of that name.

Under the Finance Committee bill, 6½ million low-income taxpayers would be eliminated from the tax rolls. Studies have indicated that the working poor often face exorbitantly high marginal tax rates which provide a disincentive to work. A Tax Code which penalizes those who work is bad welfare economics, and just plain unfair.

The Finance Committee bill represents substantial progress toward a fairer—and simpler—Tax Code in other ways, too. Our current Tax Code with its 14 rates, will be distilled down to just 2 rates, 15 and 27 percent, with nearly 80 percent of all taxpayers paying the 15-percent rate. To ensure that the very wealthy pay their fair share of taxes, this plan provides that certain upper income taxpayers will pay 27 percent on all income, rather than a 27-percent marginal rate. Furthermore, the $2,000 personal deduction, is phased out for those taxpayers earning between $100,000 and $200,000. It should come as no surprise that 30 percent of all itemized deductions are taken by 4 percent of the very richest taxpayers who pay less than 20 percent of taxes.

Prior to the 1981 Reagan tax cuts, our tax system was allowing two regrettable results: the upward creeping of marginal rates, and a constriction of the tax base. Despite the increased marginal rates, Federal revenues have remained relatively constant over the past 25 years. The economic growth that resulted from the 1981 tax cuts is proof that, although higher marginal tax rates do not increase the amount of Federal revenues collected, they certainly increase the economic burden on the economy. Giving further credence to the argument that high marginal tax rates are counterproductive are statistics released by the IRS which show that the share of income taxes paid by the wealthy immediately following the Reagan tax cuts actually increased despite the fact that the taxpayers in the highest rate bracket received the largest rate reduction. The way toward an equitable tax code is through lower rates and a broad tax base.

The American people deserve true and meaningful tax reform, such as that proposed by the Senate Finance Committee. The distortions and undue bias inherent in our current Tax Code must be eliminated in the name of both simplicity and fairness. Once again, Mr. President, I salute the chairman and the members of the Finance Committee for their work in crafting this proposal, which will restore equity, simplicity, and economic efficiency to our tax code.●

BUDGET SCOREKEEPING REPORT

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate the Budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 5 of the first budget resolution for fiscal year 1986. This report also serves as the scorekeeping report for the purposes of section 311 of the Congressional Budget Act, as amended.

I ask that the report be printed in the RECORD.

The report follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 12, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fical year 1986. The estimated totals of budget authority, outlays, and revenues are compared to the appropriate or recommended levels contained in the most recent budget resolution, S. Con. Res. 32. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32 and is current through May 9, 1986. The report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended.

No changes have occurred since my last report.

With best wishes,
Sincerely,

RUDOLPH G. PENNER,
Director.

FISCAL YEAR 1986 CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE AS OF MAY 9, 1986

[In billions of dollars]

	Budget authority	Outlays	Revenues	Debt subject to limit
Current level [1]	1,057.1	980.3	778.6	2,004.6
Budget resolution, S. Con. Res. 32	1,069.7	967.6	795.7	[2] 2,078.7
Current Level is:				
Over resolution by		12.7		
Under resolution by	12.6		17.1	74.1

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level excludes the revenue and direct spending effects of legislation that is in earlier stages of completion, such as reported from a Senate Committee or passed by the Senate. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,078.7 billion.

FISCAL YEAR 1986, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, AS OF MAY 9, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			777,794
Permanent appropriations and trust funds	723,461	629,772	
Other appropriations	525,778	544,947	
Offsetting receipts	−188,561	−188,561	
Total enacted in previous sessions	1,060,679	986,159	777,794
II. Enacted this session:			
Commodity Credit Corporation urgent supplemental appropriation, 1986 (P.L. 99–243)			
Federal Employees Benefits Improvement Act of 1986 (P.L. 99–251)		4	
VA Home loan guarantee amendments (P.L. 99–255)		−51	
Omnibus Budget Reconciliation Act of 1985 (P.L. 99–272)	4,259	−6,001	765
Department of Agriculture urgent supplemental, 1986 (P.L. 99–263)			
Advance to hazardous substance response trust fund (P.L. 99–270)			
FHA and GNMA Credit Commitment Assistance Act (P.L. 99–289)		−380	
Total	−4,259	−6,428	765
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Veterans compensation	272	185	
Veterans readjustment benefits	91	91	
Compact of free association	205	205	
Special benefits (Federal employees)	14	14	
Family social services	100	75	
Guaranteed student loans	6		

FISCAL YEAR 1986, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, AS OF MAY 9, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Payment to civil service retirement [1]	(37)	(37)	
Total entitlements	688	570	
Total current level as of May 9, 1986	1,057,108	980,302	778,559
1986 budget resolution (S. Con. Res. 32)	1,069,700	967,600	795,700
Amount remaining:			
Over budget resolution		12,702	
Under budget resolution.	12,592		17,141

[1] Interfund transactions do not add to budget totals.

Note.—Numbers may not add due to rounding.●

MORE THAN LIBYA WAS GROUND ZERO

● Mr. HATFIELD. Mr. President, my opposition to the April 14 bombing of Libya is no secret. Though I was morally outraged by the thought that the United States had sunk so low as to practice "an eye for an eye" diplomacy, I also opposed the bombing because it was just plain counterproductive to our foreign policy interests.

A column entitled, "More Than Libya was Ground Zero," appeared on May 8 in the New York Times. In it, John B. Oakes, the former senior editor of the New York Times, elaborates a point I made on this floor the day after the bombing. He argues that the "impetuous attack . . . put the [NATO] alliance under perhaps the most severe strain in its history." The rosy reports from the recent economic summit do little to diminish the fact that the bombing struck a harsh blow to the NATO alliance.

As we debate in the coming months the appropriate responses to terrorism, I urge my colleagues to consider carefully the long-term implications of the decisions we make. The points Mr. Oakes made are excellent examples of such implications, and I ask that his column be inserted in the RECORD.

The column follows:

MORE THAN LIBYA WAS GROUND ZERO

(By John B. Oakes)

LONDON.—President Reagan's bombing raid over Libya, endangered far more than the Libyans. It endangered the North Atlantic alliance, cornerstone of American foreign policy in the Western Hemisphere.

With his impetuous attack on Libya, Mr. Reagan put the alliance under perhaps the most severe strain in its history. He also put his friend Prime Minister Margaret Thatcher of Britain on the spot. As was reconfirmed only this week at the Tokyo summit by their refusal to endorse military action, not a single one of the alliance's other members approved this method of fighting terrorism.

When the President originally phoned her to say he needed to use American planes based in Britain to insure the raid's success, Mrs. Thatcher replied that she wanted to sleep overnight on his request. She had to weigh her grave political, legal and moral doubts about the raid against Mr. Reagan's arm-twisting and the consequences for Britain and the alliance of her saying "no."

In her eyes, the American military presence in Britain and the future of the alliance were essentially at risk. Her refusal would have immensely strengthened those Washington voices (some in the Administration) already arguing that the United States is militarily overcommitted in Europe, our allies are unreliable and if our bases cannot be used when we think we need them, we should pull back—or out.

This is exactly what a part—but only a part—of Mrs. Thatcher's Labor opposition (now enjoying a modest revival) would like to see. As it is, one unwelcome byproduct of the Reagan raid has been to bring the argument in Britain over the American bases from the fringes of political debate, raised mainly by leftists with little general appeal, into the mainstream, where it has suddenly become a legitimate political issue.

The French have no such problems. They have no American bases. In what one French official sardonically called "a masterpiece of Cartesian logic," the French people—unlike the British—overwhelmingly approved both Mr. Reagan's raid and the French Government's refusal to cooperate with it.

To a visitor in Paris a few days ago, Premier Jacques Chirac tried to explain why. "We are determined to fight terrorism," he said, "but at the same time we can't agree to take action without fully knowing what's going on. In this case, we were in effect confronted with a 'fait accompli.' " One of President Francois Mitterrand's close aides insisted that the President was even tougher on Libyan terrorism than Mr. Chirac; but on the overflight issue there was no difference between them.

Former President Valéry Giscard d'Estaing is one politician unequivocally in support of the raid. When French troops were flown to Chad to protect it from Libyan inroads, he noted, "We flew over some countries without ever asking permission." The implication was that the Americans could and should have done the same.

One major reason for the refusal to open French skies to American bombers en route to Libya is the almost fanatical determination to prove to the world that France is running its own totally independent foreign policy, beholden to no one. One almost gets the impression that even if the French had thought the raid was a good idea, they wouldn't have agreed to it because they weren't part of the planning process.

But hardly anyone in a responsible position seems to have thought it was a good idea. No matter how much they enjoyed seeing the Americans take it out on Muammar el-Qaddafi, few in Britain or France think a raid of this sort could be effective against terrorism originating in Libya or anywhere else.

The British and the French have their own hostages in Lebanon to worry about, as we do; but perhaps more important to them is the destabilizing effect they see on the relatively moderate Arab regimes now obliged to rally round in support of the one Arab leader whom they most distrust.

It might have been a different matter if one could have been sure that Colonel Qaddafi would be eliminated by the raid but chances of that were small. As one major political leader said: "On peut ture la bete; mas il ne faut pas la blesser." ("It's O.K. to kill the beast, but you mustn't wound him.")●

CONTRA AID

● Mr. HATFIELD. Mr. President, anyone who has studied the art of foreign policy knows that one of the greatest geopolitical minds of our century belongs to former President Richard M. Nixon. President Nixon's historic visit to the People's Republic of China gave the world insight into the then-ignored 1 billion people living on the edge of the Soviet Union. President Nixon's pursuit of détente with Moscow taught a suspicious world a lesson about mutual needs without mutual sympathy. The litany is long, and President Nixon's successes changed the dynamic of U.S. foreign policy.

No one in this body need be reminded that I do not always agree with President Nixon's conclusions. He has thoughtfully argued that United States aid to the Nicaraguan Contras is in our best interest and that the April 14 bombing of Libya was justified, for example. Despite his sound logic and artful reasoning, I cannot agree on either point. But no matter; whether or not we agree, I learn a lesson in geopolitical analysis from President Nixon each time he makes a statement on a given policy or action.

A copy of President Nixon's April 21 speech to an American Newspaper Publishers Association luncheon in San Francisco recently came to my attention. Though the primary aim of the speech is support for United States aid to the Contras, its secondary analysis of our appropriate role in such nations as South Korea and the Philippines is nothing short of brilliant. I do not commend this speech to my colleagues for its final conclusion, for I oppose that conclusion. Instead, I commend this speech to my colleagues because we would all do well to learn some of the geopolitical lessons President Nixon has to teach.

I ask that a copy of his speech be printed in the RECORD.

The material follows:

THE CASE FOR AID TO THE CONTRAS

(Address as Prepared for Delivery by Former President Richard Nixon Before the Annual Associated Press Luncheon for the American Newspaper Publishers Association)

The two major foreign policy issues in the news today are the action against Khadafy in Libya and aid to the contras in Nicaragua. Since seventy-five percent of your readers support the President's action in Libya and sixty-five percent oppose his request for aid to the contras, the safest course for me today would be to bash Khadafy. I have decided, however, to address the unpopular issue of aid to the contras. This is not because I want to add to my well-deserved reputation for being controversial but because I profoundly believe that while what happens

in Libya is important, from a strategic standpoint what happens in Nicaragua will have a far greater impact on America's future.

Before discussing the situation in Nicaragua, it is important to put the issue in perspective by analyzing what happened in the Philippines. The role of the United States in deposing Ferdinand Marcos and in recognizing Corazon Aquino as President of the Philippines has been widely applauded. Coupled with President Reagan's statement of March 14, "We believe in human rights and will oppose tyranny right or left," our action in the Philippines has been interpreted by many analysts as signaling a profound change in the Reagan Administration's policies toward friends and allies of the United States who do not measure up to our standards of democracy.

A number of pundits have editorialized that our action in the Philippines provides a formula for similar U.S. intervention to bring about a change of leaders in other countries which are allies of the United States such as Korea, Pakistan, and Turkey. Many of these same analysts, on the other hand, oppose aiding anti-communist rebels in Nicaragua on the gounds that intervention into the internal affairs of a sovereign country violates international law. We should not apply a double-standard in implementing the principle of opposing tyranny. But in applying the principle, it is necessary to make some pragmatic distinctions.

The British historian Paul Johnson has written, "The essence of geopolitics is to be able to distinguish between different degrees of evil." This is an uncomfortable concept for idealsitic Americans, but it is the way things work in the real world. We don't like dictatorships. But we must recognize the differences between communist dictatorships and non-communist dictatorships. A non-communist dictatorship allows some freedoms; a communist dictatorship none. A non-communist regime allows some opposition, and consequently there is a chance for peaceful change. A communist regime allows no opposition. Non-communist governments generally support U.S. foreign policy; communist governments do not. Soviet bloc communist regimes try to export their repression; non-communist regimes do not.

The fact that friendly non-communist dictatorships are the lesser of two evils does not mean that we should do nothing to bring about reform of governments which do not measure up to our standards of democracy. The interests of the people involved in getting better government demand our action. Our own interests are involved because a government which holds power as a result of a free election is a more reliable ally and is less vulnerable to communist subversion.

To qualify for our support, a friendly non-communist government which does not measure up to our standards of democracy should meet these conditions: (1) While we do not demand perfection or a government exactly in our image, we do insist that it must provide some human rights, including a process for peaceful change in a democratic election. (2) It must provide competent leadership and particularly economic policies which can lead to progress for the people. (3) It must have a competent military establishment which is able to maintain internal order and contain communist insurgencies. (4) There must not be a better option—a viable non-communist opposition leadership.

The Marcos government measured up reasonably well on the first requirement. It allowed freedom of religion, some freedom of the press, and flawed though it was, an electoral process which could bring about peaceful change. But its economic policies led to the lowest growth rate in non-communist Asia. Corruption exceeded the acceptable limits in a country where corruption had become a way of life. The armed forces were incompetently led and demoralized. There was a credible non-communist alternative in Corazon Aquino.

It should be noted, however, that what made peaceful change possible was that the United States had leverage with Marcos and influence with the opposition and that Marcos did not resort to force to retain power. This is an unusual confluence of circumstances, and before we try to apply the Philippine example elsewhere we should examine the situation in each country on a case-by-case basis.

Before withdrawing our support from a friendly, non-communist government, we should bear in mind three caveats:

Such an action makes other friendly leaders whose governments do not meet our standards lose confidence in us. They may conclude that being a friend of the United States—far from being beneficial—is dangerous.

Our action may result in a worse government than the one from which we withdrew support. No one can seriously contend that the Iranian people and our own security interests are better served under Khomeini than under the Shah. We should not forget that there were no boat people under Thieu and that the genocide of over two million Cambodians did not occur under Lon Nol.

When we help to depose a friendly, non-communist leader, we take responsibility for what happens under the new leadership. Haiti was ungovernable before the Duvaliers, and Marcos did not invent corruption in the Philippines. Three centuries ago, the English philosopher, Thomas Hobbes, observed: "Democracy is nothing more than an aristocracy of orators." Unfortunately, the Philippines at times resembles that unflattering description. Corazon Aquino is a talented political leader and we should provide generous economic aid to her government. But we could not make a greater mistake than to perpetuate the little-brown-brother paternalism which has contributed to the failure of the Philippines to develop mature, responsible, economic policies. More than political reform, the Philippines needs economic reform so that their progress can begin to match that of their neighbors on the Asian rimland—Korea, Hong Kong, Taiwan, Malaysia, Singapore, and Thailand. Our aid should be provided in a way that will encourage that kind of economic reform.

Korea is being nominated as a likely candidate for American intervention to bring about a change of leadership. But comparisons to the Philippines are superficial and inaccurate. Korea has one of the world's strongest economies with a growth rate of over eight percent projected for 1986. The Korean military is strong, disciplined and competent. Corruption is modest by Asian standards. There is not yet a viable alternative to the Chun government. Some media pundits have observed that since a Catholic cardinal in Korea has criticized the government as did Cardinal Sin in the Philippines, opposition to the government in Korea is similar in magnitude to the opposition which deposed Marcos in the Philippines. They overlook the fact that ninety-five percent of Philippinos are Catholic, compared to less than five percent in Korea.

There is substantial opposition to the government in Korea and President Chun should stay ahead of the curve by adopting reforms voluntarily before he is forced to do so. But before we join or encourage that opposition, we should recognize that instability in Korea could lead to an attack by North Korea and another Korean war in which we would inevitably be involved.

A well-intentioned head of a major U.S. book publishing firm has recently suggested that the United States should withhold economic aid from Liberia until it has free election. If any government needs reform, it is Liberia's. It was our quasi-colony in Africa and has suffered under atrocious government for generations. But if we are to adopt a general policy of withdrawing support from governments which do not meet our standards for free elections, we would have to end aid to every government in Africa—not a very wise, let alone humane policy.

We should use our influence to encourage democratic reform in friendly and allied governments. But we should disabuse ourselves of the naive notion that simply replacing a leader who does not meet our standards is a solution to the problem. We should make as sure as possible that his successor would not make things worse.

We should apply the same pragmatic case-by-case basis in determining when and where we should support freedom fighters against tyrannical communist dictatorships. Americans enthusiastically applauded this statement when it was made twenty-five years ago: "We shall. . .support any friend, oppose any foe to assure the survival and the success of liberty." This is good rhetoric but poor policy.

Most liberals and conservatives agree that the United States should aid freedom fighters in Afghanistan and non-communist Cambodians in Cambodia. The fact that in each case there was invasion across the border gives the justification of international law for such support.

Where we have sharp disagreement is in cases where non-communist rebels are fighting against non-elected, tyrannical communist regimes. Those who oppose aid invoke the principle of consistency. They ask how we can justify opposing rebels in El Salvador and supporting rebels in Nicaragua. The answer is that we should judge a revolution for what it stands for—does it extend freedom or tyranny? We should support our friends in governments like El Salvador who are threatened by rebels who would impose tyranny; and we should support anti-communist rebels fighting against tyranny in Nicaragua. To deny help to our friends fighting for freedom while accepting the fact that the Soviets are assisting their comrades fighting for tyranny is strategically stupid and morally indefensible.

With these principles in mind, we should insist on three conditions for aid to freedom fighters against communist dictatorships: 1) It must be in the interest of the people of the county involved. 2) It must be in our interest. 3) There must be a reasonable chance for success.

By itself, the fact that a country has a communist government does not justify our support of anti-communist freedom fighters. The most obvious example is China. The communist government of the P.R.C. denies many of the freedoms we cherish. Therefore, it meets out first condition but not the second and the third. China does

not threaten America, America's friends, or America's interests. On the contrary, it provides an indispensable counterweight to the Soviet Union which does threaten our interests. It would be a strategic and moral mistake to support a Chinese freedom fighters' movement which had no chance for success.

Poland meets the first and second conditions, but not the third. Replacing the communist regime with a democratic government would be in the interests of the brutally repressed Polish people and in our interests. But a freedom fighters' movement in Poland would have no chance for success. As we learned in Hungary in 1956, any counter-revolution in a country bordering on the Soviet Union would be brutally repressed by the Red Army. It would be a moral and strategic mistake to incite a revolution against a tyrannical communist regime and then stand helplessly by as it is crushed.

A case can be made that our support for freedom fighters in Angola would not be subject to this objection since it does not border on the Soviet Union. The failure of the Soviet Union to come to the aid of its North Vietnamese allies when we bombed and mined Haiphong in 1972, or to give military assistance to Khadafy last week, demonstrates the reluctance of Soviet leaders to commit their military forces in areas not bordering on the Soviet Union.

The clearest case for providing support for freedom fighters is in Nicaragua.

Support for the anti-communist contras is in the interest of the Nicaraguan people, who suffer under a repressive communist dictatorship which denies them any chance to bring about peaceful change.

It serves the interest of the United States. Nicaragua is more important to the United States strategically than the Philippines. It would provide the first Soviet base on the Latin American mainland. But even more dangerous strategically is the threat an avowedly expansionist Nicaragua would pose to its Central American neighbors—not of conventional aggression across borders but going under borders with subversion. Panama would be an obvious target; but there would be potentially a much more dangerous target.

Many years ago, Charles deGaulle remarked, "Central America is an incident on the road to Mexico." We have been fortunate to have a friendly government on our two thousand-mile southern border over so many years. But looking to the future, we must recognize that Mexico has enormous problems. It is plagued by autocratic one-party government, massive, pervasive corruption, a damaging decline in oil prices, a $97 billion foreign debt, high inflation, tragic poverty, and huge unemployment. It is the major source of heroin and marijuana for the United States.

Fortunately, while the Mexican press is overwhelmingly pro-Castro, there is not yet a significant communist subversive movement. Mexico is a country waiting for a revolution. While it is fashionable today to deride the domino theory, the suppression of the contras would free the hands of the Sandinistas to export their "revolution" without borders. This would send shock waves through Central America, which could eventually reach Mexico. We cannot tolerate that risk.

But can the contras satisfy the third condition for support? Is there a reasonable chance they can succeed? The answer is yes, provided we give adequate support and define success properly.

Soviet bloc countries have provided over $500 million in military aid to the Sandinista government the past five years. Iran and Libya alone have provided three times as much support to the Nicaraguan government as the United States has to the contras over the past two years. One hundred million dollars is absolutely essential, but it is not nearly enough. We must not make the mistake we made at the Bay of Pigs twenty-five years ago—to provide enough aid to be blamed for intervening but not enough to succeed.

What do we mean by success? Our goal is not to overthrow the communist government, but to provide the military leverage which, added to economic and diplomatic pressure, would force the Sandinistas to cut back on their armed forces, cease importing arms from the Soviet bloc, quit trying to export their revolution to their neighbors, and negotiate with their non-communist opposition—in effect to comply with the terms of the Contadora process.

Some critics argue that if Nicaragua is so important strategically why do we not send in American forces to drive the Sandinistas out of power? First we must recognize that while we could undoubtedly prevail, overwhelming six hundred lightly armed Cubans in Grenada is a lot different from fighting one hundred thousand Nicaraguans armed with Soviet heavy weapons. But more important, if we conquer Nicaragua, what do we do with it? An American-imposed regime could become as unpopular in Latin America as a communist regime.

The only viable policy is to provide for Nicaraguans willing to risk their lives for their country the means to force the communist government to negotiate with the opposition and to implement the very reasonable proposals of the Contadora nations.

Four major objections have been raised to providing aid to the contras.

(1) Some contend that they are not worthy of support because their armed forces include a number of officers who served in Somoza's army. This argument of guilt by association would lead us to deny aid to Mrs. Aquino's government because her secretary of defense was Marcos' right-hand man in imposing martial law in the Philippines in 1972. The contras are not saints, but their communist opponents are not angels. Guerrilla wars bring out the worst in men. But it should be noted that it is a violation of official contra policy for their troops to use terrorist tactics. When the Sandinistas resort to terror, they are carrying out official communist policy.

(2) Others content that there are not enough contras to give them any chance to succeed. They overlook the fact that there are three times as many contras today as there were in the Sandinista forces at the height of the revolution against Somoza.

(3) The argument used most often against providing aid to the contras is that we should use diplomacy rather than military pressure to convince the communists that they should restore democracy in Nicaragua. The critics overlook the fact that the communist regimes which gain power by force do not give up power peacefully. In any event, the Sandinistas have flatly rejected the peace proposals of the Contadora nations. We should support the Contadora process, but recognize that the only way to get the communists to give more than lip service to the idealistic goals of that process is to back up diplomacy with military pressure. The sad history of the United Nations since World War II and of the League of Nations during the 1920s and 1930s is eloquent proof that diplomacy without military power to back it up is impotent.

(4) The least credible argument against aid to the contras is that it will lead to another Vietnam. This is exactly one hundred eighty degrees wrong. The surest way to make it necessary to send Americans to fight in Nicaragua is to deny aid to the contras. The Nicaraguan communist regime poses a dangerous threat to its neighbors in Central America and inevitably to the United States. The only question is who will fight to remove that danger. If we provide arms to the anti-communist contras, Nicaraguans will do it. If we don't provide arms to the contras, Americans will have to do it. The way to avoid committing American forces is to provide aid to the contras now rather than to be faced by the necessity later of sending in American men to liquidate the Soviet base which will be built if the contra movement collapses.

The stakes are high. What happens in Nicaragua will have worldwide implications. If the contras, with our aid, can succeed, it would be the first time that a Soviet-supported communist government was forced to abandon its repressive and expansionist policies because of the success of a people's counterrevolution. That is why the Soviet bloc is pouring millions of dollars worth of arms into Nicaragua for their communist comrades. We must make sure that our anti-communist friends do not fail because we refused to provide an equal amount of arms for them.

Unfortunately, the battle over aid to the contras has been unusually acrimonious and divisive. What we must recognize is that the question as to whether we aid freedom fighters against communist regimes is a disagreement about policy. Anti-communism is not a policy, it is a faith—faith in freedom. Most Americans support the faith. They disagree as to what policy would best defend and extend the faith. We should debate the policy without questioning the faith of those who disagree with us.

I realize that polls show that most Americans are weary of bearing the burden of world leadership. Our failure in Vietnam, the fact that most nations to whom we provide billions in foreign aid consistently vote against us in the U.N., the failure of most of our European allies to help us in our efforts to punish and deter an international terrorist outlaw, the huge defense expenditures during a budget crunch which causes cutbacks in favorite domestic programs—all of these factors combine to create this attitude: "Why do we have to involve ourselves in places like Nicaragua, Angola, Ethiopia, Cambodia, and Afghanistan? Let us take care of our own problems and let other people take care of theirs."

I understand this frustration, but Winston Churchill gave us the answer in his Iron Curtain speech at Westminster College in 1946: "The United States stands at this time at the pinnacle of world power. It is a solemn moment for the American democracy. For with primacy in power is also joined an awe-inspiring accountability for the future."

Those words are as true today as when he spoke them forty years ago. I first addressed this organization thirty-three years ago at a white tie dinner at the Waldorf Astoria Hotel in New York City. Since that time, I have been around the world many times and have visited most of the countries of the world. I have met hundreds of leaders and thousands of ordinary people in those coun-

tries. Some like us; some envy us; some hate us. But in their hearts most of the people in the world know what every American should know—that without the United States playing a responsible role on the international stage, peace and freedom will not survive in the world. To meet that responsibility is not a burden to be borne grudgingly but an exciting challenge worthy of a great people.

There is enormous power in this room today. As America's leading newspaper publishers, you have the opportunity to help the American people develop the understanding, the wisdom, the maturity, and the will to play that great role which history has bestowed upon us.●

BROOKLYN CENTER IS NAMED ALL-AMERICAN

● Mr. DURENBERGER. Mr. President, each year the National Municipal League and USA Today honor a handful of communities as "All-American Cities."

I am proud that one of the nine cities honored this year is Brooklyn Center, MN.

Brooklyn Center is a first-ring suburb of Minneapolis with a current population of 31,000. Over the years, Brooklyn Center has become known, both nationally and in Minnesota, as a city which places a high priority on voluntarism and high quality local government.

I recall, in particular, holding a hearing of my Subcommittee on Intergovernmental Relations in 1981 at which we were exploring new ways of delivering public services. One of the subjects of that hearing was an innovative concept in housing which Brooklyn Center was launching at that time which provided housing alternatives for older city residents, freeing up their larger homes for new families.

That project, Brookwood, includes 170 apartment and townhouse units. Sixty-five of the units are occupied by former homeowners who were enticed into the project by its quality and its promise of an easier lifestyle. In the process, 65 single-family homes were made available to younger families, many of them at prices well-below the cost of building new homes in more distant suburbs. This innovative housing project was one of the items mentioned by "All-American Cities'" judges in selecting Brooklyn Center.

One of the secrets of Brooklyn Center's success has been its high quality of both elected and administrative leadership.

I am proud that one former Brooklyn Center mayor, Phil Cohen, has been on my Minnesota office staff as a legislative assistant since 1979. The current Brooklyn Center mayor, Dean Nyquist, has served without compensation since he was elected in 1978. Brooklyn Center's city manager Gerald Splinter figures that Mayor Nyquist's spirit of volunteerism and community service has saved the city about $57,000 in the past 8 years.

Mr. President, because of the high honor represented in the selection of Brooklyn Center as an "All-American City," I ask that the following articles on Brooklyn Center and Mayor Dean Nyquist be printed in the RECORD.

The articles follow:

BROOKLYN CENTER IS NAMED ALL-AMERICAN

(By Jim Parsons)

A city that claims it is run by volunteers and by a mayor who is officially paid what he is worth—nothing—became an All-American City Friday.

The volunteers were the key to Brooklyn Center being selected, along with eight other U.S. cities. The mayor's salary, or lack thereof, wasn't. At least, not directly.

The sponsors of the awards, USA Today and the National Municipal League, based their selections on citizen involvement in solving problems. For Brooklyn Center, that means its mediation service for settling disputes, its Peacemaker Center with counseling for individuals and families, and a housing project designed to bring young families into the community.

Mayor Dean Nyquist's salary indirectly reflects that. He considers the time spent on city business his contribution, and that's why he doesn't take any pay. Every year at salary-discussion time, he makes a motion that he be paid nothing. It has come to be known as the pay-him-what-he's-worth motion.

"Everyone laughs when it comes up," City Manager Gerald Splinter said, "but it has saved the city about $57,000."

Nyquist, an attorney and former state legislator, has been mayor since 1978.

Two of the projects that earned Brooklyn Center its award rely heavily on volunteers.

The mediation project, which assisted 350 people last year, is an all-volunteer operation except for its director, Ann Wallerstedt. "Our mediators not only work for nothing," she said, "but they also have to go through 25 hours of training before they start."

The mediators deal with a variety of neighborhood disputes—anything from barking dogs to trees dropping leaves in someone else's yard—as well as interpersonal conflicts, such as a stepfather and stepson disagreeing over disciplinary rules. The purpose is to solve problems before they escalate and end up in court.

The Peacemaker Center offers counseling for a variety of problems including marital difficulties, child and sex abuse and chemical dependence. The counselors are professionals; a church pays the salary of the head counselor. Lawyers, doctors and other volunteers are used when needed to help with some of problems.

The housing project was mentioned in the award because it was an idea that came from the Chamber of Commerce and others and was not hatched at city hall.

The city built 170 condo units, apartments and townhouses for older people. The idea was to attract older homeowners in the city to buy units in the Brookwood project and sell their homes to growing families.

That would help bring new people into the community of 31,000 and replenish the dwindling enrollment in the area's schools.

Singer said most of the units have been sold and there are 65 former homeowners now living in Brookwood. The financing arranged on the project stimulated other home sales.

"We are confident it has worked," he said, "because the kindergarten population (in the Brooklyn Center school district) has gone up."

Other cities receiving All-American status were Mililani Town, Hawaii; Normal Heights, Calif.; Kansas City, Mo.; Highland Park, Ill.; Jackson, Mich.; Grants Pass, Ore.; Cleveland, Ohio, and Lynchburg, Va.

Ninty-three cities entered the competition.

BROOKLYN CENTER VIES FOR ALL-AMERICAN CITY AWARD

(By Mary Jane Gustafson)

Brooklyn Center is among 20 cities in the United States—finalists competing for All-America City Awards for citizen action, effective organization and community improvement.

There were 600 entries in the contest cosponsored by Citizens Forum on Self Government/National Municipal League and USA Today. The field was narrowed to 93 cities, and last month, to the 20 finalists, who made oral presentations Saturday and Sunday at the Omni Netherland Plaza Hotel, Cincinnati, Ohio, at the 91st National Conference on Government.

Eight to 12 cities will be selected the final winners by the panel of 12 judges, who heard the oral presentations. Field verification will be made after the first of the year, and the winners will be announced in April. An awards dinner will be held in Washington, D.C.

The Rev. Dick Rabine, pastor at the Brookdale Covenant Church, presented the Brooklyn Center story, accompanied by a slide presentation. Rabine focused on three projects—the Brooklyn Center Mediation Project, the Brooklyn Peacemaker Center and Brookwood.

"We have thought of our community as an All-America City for a long time, and we welcome this opportunity to try to make it official," Rabine told the judges. He explained the city will celebrate its 75th anniversary in 1986, and added, "Our community has a strong industrial base and a goals-oriented value system that has given us stability in our seven-and-a-half decades of growth and change.

"Public/private partnerships have contributed significantly to our civic successes in Brooklyn Center," Rabine continued. "They have enabled us to develop a proactive sense of community—an ability to anticipate problems and to deal creatively with them."

"Today," Rabine said, "140 community volunteers serve as mediators, case developers, receptionists, child care providers for parents attending support groups, foster parents to college students in need of positive parenting, attorneys as legal advisors, physicians for medical services and pastors who actively support the Peacemaker Center with referrals."

The third major project is Brookwood. Rabine said a community concern arose over the number of aging residents still living in their original homes. "Few moderately-priced homes were available for young families. These conditions contributed to a potential for a deteriorating housing stock, and declining enrollments in two of the four school districts serving Brooklyn Center."

"A survey of 500 elderly Brooklyn Center residents indicated that most wanted to stay in the community, that generally they had resources to live in un-subsidized housing, and that they wanted to escape mainte-

nance costs associated with home ownership," Rabine explained.

Armed with survey results, the Brooklyn Center Chamber, the Community Emergency Assistance Program (CEAP) and city government joined together to explore the potential for a specialized housing project, and a 25-member citizens' committee was formed to work with local senior adults. A developer was selected, financial options explored, a site chosen, and a final development package was recommended to the city. The project includes 170 rental apartments and town homes made affordable, in part, through tax increment financing.

Rabine stressed that the city's administrative team, business community, various churches, civic groups, service clubs, school personnel and a host of citizen volunteers have built a strong tradition of working together for the good of the community. "This shared commitment has resulted in the establishment of numerous programs and community problems and meeting community needs," he said.

Explaining the Brooklyn Center Mediation Project, Rabine said concern development because of an increasing number of single-parent households, a rising need for elderly care, an increase in low-to-moderate income families in rental housing and juvenile problems. "This contributed to stressful family relationships and a dispute between neighbors—all requiring police attention. Ultimately, it led to the formation of a broad-based 35-member task force charged with the responsibility of identifying solutions."

The Brooklyn Center Mediation Project began in June of 1983, after a 15-member advisory board was charged with developing and promoting the project and volunteers were trained. Over 500 people have used services provided by the Mediation Project during its brief two-year history to resolve disputes between neighbors, family members, retailers and customers, employers and employees, and with first-time juvenile offenders, their parents and victims. Voluntary mediation is offered free of charge and is confidential.

"Our second noteworthy project is the Brooklyn Peacemaker Center," Rabine told the judges. "This project developed as a direct result of a need for office space by the Brooklyn Center Medication Project and affordable counseling service for individual and family problems."

Rabine explained how the vacant Brookdale Covenant parsonage, 5136 N. Lilac Drive, was transformed into the Brooklyn Peacemaker Center a year ago after a nonprofit corporation was established to serve as an umbrella structure for the two programs. In addition to mediation and counseling, the Peacemaker Center offers an extended range of human services including Parents Anonymous, personal and group counseling, and supervised visitation for non-custodial parents.

Rabine said that $2.225 million worth of mortgage bond financing was secured to help young families afford homes made available by seniors moving into Brookwood. "More than 120 new families have moved to Brooklyn Center in two years since the bond offering made home ownership possible for them. This healthy influx has begun to restore our housing stock, and inject significant vitality into our community." Rabine explained.

"And we aren't done yet—not by a long shot," he continued. "Last year, our city council appointed a 25-member Year 2000 Committee to analyze trends and concerns likely to affect our community in future decades, and to evaluate current efforts to meet future challenges.

"So, you can see why we in Brooklyn Center describe our community as The Something More City," he said. "The philosophy of our city leaders and residents reflect that there is always something more to be offered, and that there is always something more to be done to meet the needs of the community."

Brooklyn Center's "Volunteer Mayor" Has Donated $54,381 to His Community

(By Jack Tubert)

When he begins his fifth term and the subject of salary comes up, Brooklyn Center Mayor Dean Nyquist will introduce his well-known "Pay-Him-What-He's-Worth" resolution.

Since he was first elected in 1978, Nyquist hasn't taken a dime of the $540 monthly salary payable to the city's chief executive. Instead, by his motion, the money goes into the city's general fund.

A corporation and real estate attorney in a small firm, Nyquist said he makes a good living without the city's money.

This has saved Brooklyn Center about $54,381 through October, and has made Nyquist a rarity in mayoral circles. No other Minnesota city with a population exceeding 30,000 has an unpaid mayor, he said (Brooklyn Center's population is 31,230). The Minnesota League of Cities lists seven cities with populations between 30,000 and 36,000. Their annual mayoral salaries range from $5,200 in Coon Rapids to $10,188 in Moorhead.

And Nyquist points to a directory of U.S. mayors of cities Brooklyn Center's size that also shows no other volunteer mayors.

He doesn't decline the salary to be unique; he is simply a community volunteer.

City Manager Gerald Splinter said, "Coaches in the Little Leagues and people elsewhere across the city volunteer their time and their talents to the community. Since he hadn't had time to develop the skills needed to coach baseball, the mayor feels he has skills in government to offer. So he serves as mayor without salary; that's his volunteering."

Nyquist's government skills stem from his 1967-72 stint in the Legislature, where he once was listed as Minnesota's third most conservative state senator.

Volunteering is a key component of his conservative philosophy, and he promotes it every way he can.

"I like to get people involved in projects, like the current Year 2000 Committee. Already it is looking ahead to the city's needs," said Nyquist.

A task force of volunteers has been formed to decide what the city should do with the Earle Brown Farm complex, which the city recently bought.

Nyquist also boasts of the city's volunteer partnership of industry and parents caring for kids after school.

City public-private programs and volunteer projects for youth earned a salute last summer from the National Conference of Mayors. One such program, which helps redirect juvenile offenders, was started with $2,000 in "seed money" that in effect came from Nyquist's untapped salary. Today it is self-sufficient and quite successful, he said.

Such civic involvement has helped make Brooklyn Center one of 20 semifinalists in the 1985 All-America City competition. The final phase of the competition will be held Saturday in Cincinnati.

When his fifth term ends in 1987, Nyquist's total salary contribution to the city will be just shy of $65,000.

He declines to discuss seeking to tie or break Brooklyn Center's record of six consecutive terms by a mayor. That was set by his predecessor, Phil Cohen, now a member of U.S. Sen. Dave Durenberger's staff. Cohen remains active on civic committees and calls Nyquist "a very dedicated mayor; he's kept his conservative manner, but is very receptive to new creative ideas."

Nyquist will be 51 in January. He was born the son of a farmer in Brule, Wis. The family moved to Hoffman, Minn., when he was 8. He earned a degree in electrical engineering from North Dakota State University, and worked as a manager in an electrical department at Honeywell before embarking on a law career.

When he does leave politics, the mayor said, he might try his hand at the restaurant business. He recalled telling that to a friend, who asked if Nyquist was ready for an 80-hour work week. Nyquist's answer? "Why not? it's less than I work a week now!"

Brooklyn Center Looks Ahead to the Year 2000

(By Leonard Inskip)

Brooklyn Center hopes to shape its future rather than merely respond to events as they occur. Its plan for doing so is a useful model for other Minnesota cities, particularly maturing suburbs.

While day-to-day municipal problems are important, "there needs to be more time, energy and effort directed toward . . . a . . . strategic perspective for Brooklyn Center," said a committee that looked ahead to the year 2000. "If our community is to be vital in the coming decades, we must anticipate trends, problems and issues and attempt to mitigate or avoid their negative impacts and take advantage of the positives."

A key element in that strategy is a concise, simple chart that matches trends and issues with impact areas. The chart cuts through the complexity of trends and issues and presents them understandably. It also can help officials and citizens readily make comparisons and connections between issues.

The 13-member committee, drawn from government and the public, listed issues and trends vertically on the chart. It listed horizontally nine possible impact areas—for example, housing and planning.

James Barton, director of planning assistance for the Metropolitan Council, says Brooklyn Center is a planning leader. He hopes other communities will look at its "unique process." Phil Cohen, an aide to Sen. Dave Durenberger, says Brooklyn Center is identifying "what's needed by first-ring suburbs over the next decade." Cohen, a former Brooklyn Center mayor, was on the Year 2000 Committee.

Brooklyn Center's population and housing are aging. Single-parent households are increasing. Commerce and industry are expanding, helped by the opening of Interstate Hwy. 94 to downtown Minneapolis.

Although established in 1911, Brooklyn Center had most of its residential growth after World War II. By 2000, that housing will be 30 to 40 years old, a time when rejuvenation often is needed or decay sets in.

A middle-income community of 31,000 people, Brooklyn Center has more blue-

collar than white-collar workers. Much of the housing consists of three-bedroom ramblers of 900 to 1,000 square feet, with single-car garages. To encourage remodeling, so that houses attract future buyers, the city may need to revise codes governing setbacks for additions. It might offer advice on reinsulation, new heating systems and other home improvements. The Year 2000 chart shows housing affecting city council policy, city planning and city services. The committee suggested that the city's Housing Commission "recommended financial and informational mechanisms to assist homeowners in major maintenance and energy modernization projects."

The aging of residents produced a comment in all nine impact areas on the chart: The city may need to develop new services for the elderly and new housing options that encourage turnover of empty-nester homes to younger families.

Other issues raised by the committee ranged from recycling and storm drainage to historic preservation and schools.

Another was an increasing potential for city involvement in human services. Once, municipal governments dealt mainly with fire, police and physical development. New problems include battered women, single parents, the elderly, the handicapped. Suburbs usually lack much experience with social programs, says City Manager Gerald Splinter, but "the report tells us to start thinking." The report urged the city council to ask the city's Human Rights Commission to recommend "guidelines for evaluating new social and human-resource service needs."

Splinter notes how one new program may affect others. The Human Rights Commission's efforts for handicapped accessibility, including a booklet listing accessible businesses, attracted new handicapped residents. That created a need for better sidewalk snow removal. More handicapped residents also means more stalled wheelchairs to respond to.

A Target store planned in 1984 illustrated the problem of reacting rather than anticipating. Worried about traffic flows, the city declared a three-month moratorium on retail development while it studied traffic. Today, Brooklyn Center's traffic data is computerized for the first time.

"If the new process works, the city council will spend money to solve a problem before a crisis comes," Splinter says. But such decisions won't be easy. "It's tough to get money for a potential problem."

Splinter says another key to success will be joint biennial meetings of all city agencies and commissions to update the Year 2000 report, so that it evolves with city needs. The first meeting is proposed for 1987.

Brooklyn Center is a candidate for an All-America City award in 1986. No judgment is possible here on most Brooklyn Center programs. But an All-America City should be one that looks beyond today so that it can better manage tomorrow. In that sense, Brooklyn Center is a winner already.●

JOSEPH E. KELLER, COUNSEL EMERITUS FOR PRIVATE CARRIER CONFERENCE

● Mr. GLENN. Mr. President, as a Senator from Ohio and a member of the Senate truck caucus, it gives me a great deal of pleasure to note that Joseph E. Keller, founding partner in the Washington, DC-based law firm of Keller & Heckman, has been named counsel emeritus for the Private Carrier Conference, after a long and distinguished career in which he served as the group's general counsel.

The Private Carrier Conference is the largest of 11 conferences affiliated with the American Trucking Association. It represents manufacturers, distributors, shippers, and receivers who operate motor trucks as an extension of their primary business endeavors. Private carriers are the dominant sector of the trucking industry today, hauling nearly 60 percent of the Nation's intercity truck-ton mileage and operating 6 million vehicles.

Joe Keller was born in Dayton, OH, in 1907. He graduated from the University of Dayton in 1928 with an A.B. degree, and received his law degree there in 1930. He was admitted to the Ohio Bar and began practicing law in Dayton.

When the Federal Communications Commission was being organized in 1934, he was asked to go to Washington by James Cox, newspaper publisher, family friend, and former Ohio Governor. Ohio's loss was Washington's gain. Soon thereafter he joined the Washington law firm of Dow, Lohnes & Albertson where he began his work with the Private Carrier Conference. During World War II he served as a major in the U.S. Army, after which he returned to the law firm.

In 1962, he founded his own firm, Keller & Heckman, with Jerry Heckman, a former colleague. He has served as a law instructor and contributed numerous articles to leading law reviews. He has also served as legal editor of the Private Carrier.

I know that my colleagues join me in congratulating Joe Keller for his dedication, his many outstanding achievements and responsibilities in the motor carrier industry, and his effective contribution in the Nation's search for a responsible transportation policy.●

NAVY CELEBRATES 75TH ANNIVERSARY OF NAVAL AVIATION PROGRAM

● Mr. WILSON. Mr. President, on Thursday, May 8, I inserted in the RECORD a tribute for the Navy's 75th Anniversary of the Naval Aviation Program. Due to a clerical error, a letter I sent to Secretary of the Navy John Lehman was inadvertently omitted. I ask that the letter be printed in the RECORD at this point.

The letter follows:

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, May 8, 1986.

Hon. JOHN F. LEHMAN, JR.,
Secretary, Department of the Navy,
The Pentagon, Washington, DC.

DEAR MR. SECRETARY: Last year, the Senate Armed Services Subcommittee on Sea Power and Force Projection strongly supported your request for nine P-3C aircraft to meet your Barbers Point squadron transition and the initial procurement of P-3C aircraft for the first Naval Reserve P-3C squadron in Fiscal Year 1988. We also approved an additional Update III retrofit kits that were added to your requested 15 kits in the FY '86 Appropriations Bill, to accelerate modernization of the fleet.

Recently, you announced the Navy's plan to procure 125 P-3D's beginning in Fiscal Year 1989. Because of growing Soviet submarine threat, I fully support the need for the P-3D. I applaud your efforts regarding the upgrading of the avionics system and planned incorporation of more fuel efficient engines which will provide a significant increase in this weapon system's capability. Your support, with respect to P-3C procurement through FY '88, is essential in maintaining an adequate force structure.

It is my understanding that nine P-3C's are needed in Fiscal Years '87 and '88 to complete procurement for the first P-3C reserve squadron, to continue the Barbers Point transition, and to support the critical ASW aircraft requirements of a key NATO ally. I am sure that you fully appreciate the need to maintain the current production line of this proven ASW asset as the program proceeds from the "C" and the "D" configuration.

Be assured of my strong support for the funds and program in the President's request and in the smooth orderly transition from the P-3C to the P-3D.

Thank you for your support and consideration on this important matter.

Sincerely,

PETE WILSON.●

INNA MEIMAN'S PAINFUL PLIGHT

● Mr. SIMON. Mr. President, Inna Meiman is a woman in pain. She is in physical pain and in mental anguish.

A member of my staff, Pamela Huey, visited Inna Meiman in her Moscow apartment May 9. Inna's husband, Naum Meiman, had gone to the country because the pressure on him had become unbearable.

The Meimans are seeking to emigrate to Israel. Inna Meiman is critically ill with cancer and holds out hope treatment she would receive in the West would cure her.

Soviet doctors have performed four operations on Mrs. Meiman's malignant tumor but they say there is nothing more they can do for her.

Inna Meiman said her pain is constant. Only occasionally, when she sits very still, does the pain subside somewhat. But she says she is also in pain watching her husband, knowing what he is going through.

I implore the Soviet Government to allow the Meimans to leave. Why the Soviets refuse to let this kind, wonder-

ful couple emigrate is beyond my imagination. They both deserve the best life has to offer and not the death that is sure to come for Inna if she is denied permission.●

THE STRATEGIC DEFENSE INITIATIVE INSTITUTE

● Mr. LEVIN. Mr. President, I would like to address the Senate today about the Strategic Defense Initiative Institute. The Department of Defense announced its intention to create this Institute on March 18, 1986, in the Federal Register. It is an important new research center which the Department of Defense has proposed to provide the Government with independent, objective scientific advice about the Strategic Defense Initiative Program, also known as star wars.

The SDI Program could use an objective research center. The program has so many technological questions that our best scientists cannot agree on the program's feasibility, much less its ultimate characteristics. Moreover, the country is making a huge investment in the program—over $2 billion this year with a pending budget request for almost $5 billion next year. So when I heard that DOD was proposing a new institute to evaluate ongoing SDI research, I wanted to find out more about it.

In an exchange of letters with the Defense Department, I learned a great deal about the proposed Institute. I want to share that information with the Senate, and copies of the correspondence will follow these remarks. Some of what I learned was also troubling, and I want to share my concerns with the Senate as well.

First, some background. I learned that, officially, the Institute would be a federally funded research and development center or FFRDC. FFRDC's formation and operation are controlled by executive directives designed to ensure these organizations' independence, competence and cost effectiveness. The directives require a Federal agency wishing to create a new FFRDC to assess the need for the research center. If the assessment is favorable, the directives permit the agency to contract with a private entity to manage the center for a maximum of 5 years. The directives caution the agency that it must establish a center which will maintain its independence from the Government to ensure its objectivity. They also require the agency to implement controls to assure the reasonableness of the center's expenses.

After reviewing these directives, I began to ask some questions about the SDI Institute. I asked the Defense Department for the names of those "certain prominent individuals in the science fields" whom Secretary Weinberger has invited to form the organization to run the Institute. The Defense Department has so far refused to identify these individuals—even though these individuals have agreed to submit a proposal to run the Institute, and even though the Department is not planning to invite anyone else to bid on the project.

Given the potential significance of the Institute in evaluating the SDI Program, the public and Congress have a right to know full details about the project and the people their Government is dealing with, on a sole-source basis, to manage the research. The Defense Department has, in some respects, been very forthcoming about the SDI Institute; I urge them not to shy away from the full public discussion that should and will attend any undertaking of this kind.

Another concern I have about the Institute arose when I asked the Defense Department about how the Institute's personnel would be selected. I was told, to my surprise, that the Strategic Defense Initiative Organization was planning to participate in the selection of the Institute's chief executive and about a dozen senior staff members. That wasn't the response I was expecting.

In most cases, the Government plays no role in an FFRDC's hiring decisions beyond expressing approval or disapproval of the person proposed by the contractor to be the chief executive. The chief executive of one DOD-sponsored think tank, the Center for Naval Analysis, has been selected and retained even in the face of express Government opposition. That's because one of the quickest ways to weaken an FFRDC's independence is to allow the sponsoring agency to influence its personnel decisions. The extensive role envisioned by SDIO is simply unprecedented in DOD-sponsored FFRDC's, and Congress should not sit still for it.

I was further surprised to learn that the Defense Department was not planning to ask any outside experts to review the management proposals it receives regarding to SDI Institute. The peer review process is our best means for ensuring high-quality scientific endeavors, and our Nation's scientific capability is built upon it. It is clearly appropriate here. In light of the millions of dollars that may be used to fund the Institute and the important work it would be doing, the need for a peer review to ensure a successful operation is too critical to ignore.

Finally, I learned that the Defense Department does not intend to address a revolving door problem that may attend the operations of the SDI Institute. Unlike many other research centers, the SDI Institute will be expected to spend a significant portion of its resources on reviewing research performed by other parties. Absent rules to the contrary, an Institute employee could advocate funding for a particular firm's proposals and, a few weeks later, take a job with that same firm. This possibility may taint the proposed Institute's objectivity and should be addressed.

The SDI Institute could make an important contribution to an objective assessment of the SDI Program—but only if it is a truly independent body. Independence is the critical requirement—otherwise the Institute may become the equivalent of scientific window-dressing.

The Defense Department has indicated its willingness to consider the issues I have raised. I am hopeful that most if not all of them can be promptly resolved administratively. If not, I will pursue legislative remedies, and I hope that my colleagues will join with me in this effort. The proposed Institute is too important not to take the steps we must to ensure its independence.

I ask that the attached letters be printed into the RECORD.

The letters follow:

U.S. SENATE, COMMITTEE ON GOVERNMENTAL AFFAIRS, SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
Washington, DC, April 9, 1986.

Hon. CASPAR WEINBERGER,
Secretary, Department of Defense, The Pentagon,
Washington, DC.

DEAR MR. SECRETARY: On March 18, 1986, the Department of Defense published in the Federal Register a notice of intent to establish a new Federally Funded Research and Development Center (FFRDC) designated the Strategic Defense Initiative Institute (SDII). Please provide the following information about this proposal:

1. In accordance with section 6(a) and (b)(1) of OFPP Policy Letter 84.1 (April 4, 1984), prior to announcing its intent to establish the SDII, the Department is required to assess the adequacy of existing alternative sources to accomplish the same objectives.

a. Please identify by name and job title the persons who performed this assessment and the date on which the assessment was completed.

b. Please identify each alternative source assessed and explain why each was found inadequate. In particular, please explain why the Department concluded that an existing FFRDC or national laboratory could not accomplish the same objectives at a lower cost.

c. Is the Department's assessment of existing alternative sources contained in a written report? If so, please submit a copy with your responses to these questions.

2. Please describe the expected organizational structure of the SDII.

a. Will the federal government or a private entity own the SDII?

b. Please indicate the type of organization expected to manage the SDII—will it be a university, consortium of universities, other nonprofit organization, or industrial firm?

c. Please identify by name and address any organization which is under consideration or has been selected to own or manage the SDII.

3. Will the SDII operate under a general charter from the government or pursuant to specific federal contracts? Please elaborate.

a. Will the SDII be capable of performing in-house scientific analysis and technical evaluations or will it contract with outside entities to perform these tasks?

b. Will the SDII perform primary research or be limited to reviewing research performed by others?

4. What will be the relationship between the SDII and the Strategic Defense Initiatives Office ("SDIO")? Will there be any overlap in personnel? Please describe how the SDII will differ in its operations and mission from the SDIO.

5. What will be the relationship between the SDII and existing FFRDCs and national laboratories performing research for the Strategic Defense Intiative Program? Will other FFRDCs and the national laboratories continue to perform research for the Strategic Defense Initiative Program? Will these other entities be subject to review by the SDII?

6. What will be the relationship between the SDII and privately-owned firms? Will the SDII be able to award or otherwise participate in the decisions to award federal research and development contracts to these firms? Please explain.

7. In accordance with section 6(c) of OFPP Policy Letter 84-1, has the Department executed a contract, legal instrument, and/or written agreement of sponsorship with any party concerning the SDII? Is the Department currently engaged in negotiating or drafting these documents? Please submit a copy of any executed document with your responses to these questions.

8. How many persons are expected to be employed by or otherwise funded by the SDII during calendar years 1986 and 1987?

9. Who will have input into the selection of personnel and how will this process work? Who will have final authority to select personnel?

10. Please identify by name, job title and address, the person, if any, who has been selected to head the SDII.

11. OFPP Policy Letter 84-1 indicates that FFRDCs are to "operate in the public interest free from organizational conflict of interest" and are to maintain their "objectivity and independence" from the sponsoring agency. Sections 5(C)(2)(e) and 6(C).

a. Will persons working for the SDII be federal employees subject to federal conflict of interest laws? If not, what measures will be taken to safeguard the SDII from conflicts of interest including the "revolving door"?

b. What measures will be taken to assure that the SDII will maintain its objectivity and independence from the Department of Defense and SDIO? In particular, what steps will be taken to assure that the SDII is staffed with persons holding a variety of viewpoints on the feasibility and cost effectiveness of the Strategic Defense Initiative Program?

12. What is the projected budget for the SDII during fiscal years 1986 and 1987?

a. What are the SDII's projected startup costs?

b. Will the SDII require the construction or rehabilitation of any facilities? Where is the SDII expected to be located physically?

c. What are the SDII's projected operating costs during fiscal years 1986 and 1987?

13. What will be the initial source of funds for the SDII? Will the Department request new budget authority or will it re-direct funds from existing programs? If it plans to redirect funds from existing programs, which programs will be affected?

14. Since the SDII will perform research in a noncompetitive environment, what controls has the Department established in compliance with section 6(b)(4) of OFPP Policy Letter 84-1 to ensure that the SDII will provide services at a reasonable cost?

Please provide this information as soon as possible, but no later than April 14, 1986. If you have any questions, please have your staff contact Elise J. Bean of the Subcommittee's staff at 224-3682. Thank you for your assistance in this important matter.

Sincerely,

CARL LEVIN,
Ranking Minority Member.

DEPARTMENT OF DEFENSE, STRATEGIC DEFENSE INITIATIVE ORGANIZATION,
Washington, DC, April 16, 1986.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: Secretary Weinberger has asked me to respond to your letter dated April 9, 1986 requesting information about the Strategic Defense Initiative Institute (SDII). These responses correspond to the numbering in your letter.

1. (a) The assessment was an evolutionary process in which a number of individuals participated. The assessment was presented orally to the Secretary, and reviewed and approved by him, in early January of this year. It was dated in final written form March 1, 1986. The individual with present overall responsibility for the assessment is Mr. Richard Sybert, Special Assistant to the Secretary and Acting Project Officer for the SDII.

(b) The SDII will perform two basic functions: (i) ongoing, overall systems architecture work at the "macro" level, involving integration of research from an overall, cost-efficiency and tradeoff perspective; and (ii) evaluation and coordination of the research performed by private industry and other outside entities. The advice and recommendations of the SDII thus may affect the overall direction of research. Accordingly, in order to provide the SDIO with absolutely objective advice, the SDII will not be permitted to have any other SDI-related work, nor to serve other clients who themselves have such work. We judged it best, in order to meet this requirement and to provide the SDIO with objective, conflicts-free advice, to opt for a new organization. The purpose is precisely to avoid any bias, unintentional or otherwise, in evaluating SDI-related technology for a future national decision by the responsible authorities on a strategic defense program.

Specifically, we considered three basic categories of organizational forms that realistically might meet the technical support needs of the SDIO:

(i) Government organizations, including expansion of the present SDIO staff, a military organization, or a new DoD field agency;

(ii) For-profit firms, including large industrial firms, small-to-mid-size system engineering and technical assistant (SETA) contractors, or a new consortium of such firms or contractors, either U.S. or foreign;

(iii) Non-profit firms, including existing federally funded research and development centers (FFRDCs), a new division within an existing FFRDC, a new FFRDC, universities, and private not-for-profit laboratories/corporations, new or existing.

Our assessment of each category was as follows:

(i) The use of a government organization to provide the special technical support needs of the SDIO was found to be undesirable for two main reasons: it would be difficult to attract, retain, and manage the required number of highly qualified scientific and engineering personnel; and the needed personnel buildup could not occur sufficiently rapidly, nor respond sufficiently quickly to changing requirements.

(ii) The use of for-profit firms was found to be undesirable because of the conflicts of interest inherent in the for-profit organization approach; the probable inability to ensure total objectivity and independence of thought; and the negative business impact on such a firm through its necessary dedication to SDIO technical support alone.

(iii) Of the various not-for-profit alternatives examined, a new FFRDC ranked highest. The FFRDC mechanism was considered to offer quick, responsive handling of SDIO needs, while allowing considerable freedom in establishing salary structures and working environments conducive to attracting top scientific and engineering talent. While reliance on an existing FFRDC or other non-profit organization potentially would provide more readily or more quickly available capability and staff, none was found to have the breadth of specialized expertise to undertake major SDI technology program review and oversight. Any existing organization, including an existing FFRDC or national laboratory as identified in your April 9 letter, necessarily will have ongoing work, and a deeper background, in one technology or another. Nor would any organization already in existence be in a position to offer the desired degree of dedication to, and exclusive focus on, the SDI program. The establishment of a new FFRDC, specifically oriented to SDIO technical support needs, was found to be likely to result in materially greater responsiveness and support than trying to reorient an existing FFRDC.

(c) We respectfully decline to provide a copy of the written assessment. It is an internal, confidential working paper prepared pursuant to internal Executive Branch policy. Please note, however, that I and my staff are willing and available to discuss the substantive matters treated in the assessment with you and your staff.

2. The expected organizational structure of the SDII has not been finally determined. At this point, however, we expect that it will be structured to maximize effective liaison with the SDIO.

(a) An FFRDC is an independent, private, not-for-profit organization.

(b) See above.

(c) The Secretary has invited certain prominent individuals in the science fields to form an organization that will submit a proposal for the SDII. No commitment has been or will be made until such a proposal is received, reviewed, and evaluated.

3. It is presently anticipated that SDIO will enter into a contract with the SDII for an initial term of five years.

(a) It is presently anticipated that the SDII will perform in-house scientific analyses and technical evaluations at the macro or integration level, as discussed above. Other SDI work will continue to be performed, as now, by outside entities.

(b) As discussed above, the SDII would perform primary research at the macro or integration level. Other research will continue to be performed by other entities, and would be reviewed by the SDII.

4. The SDII will provide technical support to the SDIO in the basic two functions described above, ongoing systems architecture work at the macro or integration level, and evaluation of outside research. The SDII will be a purely technical support group. The SDIO will retain all management and decision responsibility for the SDI program.

5. In the source of its evaluation function, the SDII may undertake research audits of other entities, including other FFRDCs and national laboratories, that are performing research for the SDI program. It is not anticipated that there will be any direct contractual relationship between the SDII and such other entities.

6. It is expected that the SDII will provide advice, recommendations, and evaluations to the SDIO that as a practical matter may impact upon the latter's decisions to award federal research and development contracts to other entities. The SDII will have no formal or legal role in such awards, however, as all management and decision responsibility will continue to be exercised by the SDIO. It is possible that the SDII may subcontract in appropriate circumstances.

7. There is no such executed contract, legal instrument, and/or written agreement of sponsorship at present. The SDIO is currently engaged in drafting a sponsoring agreement.

8. The number of personnel for the SDII during calendar years 1986 and 1987 is presently uncertain. The proposal that we anticipate we will receive presumably will identify the level of personnel thought to be required to meet the stated functions of the SDII. We would expect to discuss the matter in subsequent negotiations and discussions.

9. As private organizations with independent management, FFRDCs themselves have final authority to select their personnel. However, the SDIO expects to work with the SDII in identifying needed personnel functions, and may review potential candidates for senior positions.

10. No such person has yet been selected.

11. Please see discussion above regarding the necessity for the SDII to be objective and conflicts-free.

(a) SDII personnel will not be federal employees. The OFPP letter to which you refer speaks to organizational conflicts. We expect to incorporate appropriate provisions in the sponsoring agreement under the which SDII employees would safeguard information owned by other contractors.

(b) As a private organization with independent management, the SDII will be expected to maintain the necessary objectivity and independence from other entities. Naturally there will be close liaison between the SDII and SDIO, since the purpose of the SDII is to provide the SDIO with needed technical support. The SDIO will give the SDII direction and input regarding missions and activities. With regard to your inquiry as to "what steps will be taken to assure that the SDII is staffed with persons holding a variety of viewpoints on the feasibility and cost-effectiveness of the strategic defense initiative program," the mission of both the SDII and its personnel will be to provide objective evaluation and advice. No particular "viewpoint" on feasibility or cost-effectiveness is being sought; technical expertise and objectivity are being sought.

12. There is no projected budget at present for the SDII during fiscal years 1986 and 1987. We anticipate that the proposal we expect to receive will contain detailed cost estimates, which will then serve as the basis for subsequent discussion and negotiations.

(a) Please see above.

(b) The SDII will be required to be physically located within the metropolitan Washington, D.C. area, to facilitate effective liaison between it and the SDIO. It is expected that the SDII will arrange for necessary physical space in the normal course.

(c) Please see above.

13. The initial source of funds for the SDII is expected to be existing appropriated funds for the SDII. We are presently examining the programs from which the funds might be reprogrammed.

14. We intend to include provisions in the sponsoring agreement that will provide for the indicated controls.

I hope that this answers your questions in a satisfactory manner. My staff and I remain ready and willing to answer your further questions.

Yours truly,

JAMES. A. ABRAHAMSON,
Lieutenant General, USAF,
Director, Strategic Defense Initiative Organization.

U.S. SENATE, COMMITTEE ON GOVERNMENTAL AFFAIRS, SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
Washington, DC, May 9, 1986.

Hon. JAMES A. ABRAHAMSON,
Director, Strategic Defense Initiative Organization, Department of Defense, The Pentagon, Washington, DC.

DEAR GENERAL ABRAHAMSON: Thank you for the prompt response to my letter of April 9, 1986, regarding the expected structure and operation of the proposed Strategic Defense Initiative Institute (SDII). I appreciate the information you and your staff have provided to my office about this project. I do, however, have several specific concerns about the Defense Department's proposed handling of the Institute.

First, I object to the Defense Department's refusal to provide a copy of the assessment report required by OFPP Policy Letter 84-1 (April 4, 1984). This report is not an informal "working paper" of the Defense Department, but a formal document required under an existing, government-wide procedure to justify creating another Federally-Funded Research and Development Center (FFRDC). *See* OFPP Policy Letter 84-1, Sections 6 (a) and (b)(1). A federal agency may not sponsor a new FFRDC absent this assessment. Since a copy of the assessment report is essential to a review of the Department's compliance with the applicable executive directives, I urge you to supply a copy.

Second, I object to the Defense Department's refusal to identify "certain prominent individuals in the science fields" whom Secretary Weinberger "has invited . . . to form an organization that will submit a proposal for the SDII." I understand that these individuals have agreed to submit a proposal. Moreover, I am told they will be the only ones invited to submit a proposal to operate the SDII. If so, the public and the Congress have a right to know who has been extended the privilege of dealing with the federal government on a sole-source basis concerning a long-term contract.

If my information is incorrect and the Defense Department intends to consider a number of proposals to operate the SDII, please so state. In addition, please identify those persons and organizations which have already contacted the Department and indicated their interest in operating the SDII as well as those persons and organizations from which the Department is soliciting or has solicited SDII proposals or with whom the Department has conferred concerning the possibility of managing an FFRDC devoted to the Strategic Defense Initiative Program.

Third, I object to the type of involvement in the SDII's personnel decisions which SDIO is contemplating. Your letter states that SDIO plans to "work with the SDII in identifying needed personnel functions, and may review potential candidates for senior positions." I am told SDIO plans to participate in the selection of the SDII's chief executive officer, senior deputy and the "directors" of various technology groups—approximately a dozen senior staff persons in all. This proposed course of action, according to the Congressional Research Service, is unprecedented in the Department's relationships with the FFRDCs it sponsors.

Federally-Funded Research and Development Centers are designed to provide independent, objective scientific advice to the government. The Executive Branch directives state that they are to maintain independence even from their sponsoring agencies. *See* OFPP Policy Letter 84-1, section 6(c). The justification for this rule is central to the purpose of funding an FFRDC—such centers have to be able to deliver objective scientific advice, even findings which may be politically unpopular with their sponsors.

Scientific objectivity and independence from political considerations are particularly important for the Strategic Defense Initiative Program. This program has aroused serious academic debate as to its technological feasibility. Reputable scientists differ on even the most basic scientific issues, and an independent, objective body is needed to address the technological questions. A traditionally independent FFRDC could meet this need.

The foundation for an independent and objective research center is a director and staff well-insulated from political pressures. The quickest way to weaken an FFRDC's independence is to permit the sponsoring agency undue influence over the selection of the center's staff.

For these reasons, SDIO should reconsider its role in the hiring decisions to be made by the SDII. The Defense Department's participation should be confined to confirming or objecting to the single person proposed by the contractor to be the Institute's chief executive. It should not participate in the search for this candidate. Further, it should not participate in the selection of any other person to be employed by the SDII or in the identification of the Institute's personnel functions. These are matters best left to the contractor's independent judgment. In this way, the Department can help insulate the SDII from the politics surrounding the SDI Program.

Fourth, I am surprised by the Defense Department's tentative decision not to use outside experts to review the proposal(s) to operate the SDII. Our country's scientific capability is built upon the peer review process. It is our best means for ensuring high-quality scientific endeavors and is clearly appropriate in this context. An expert third-party review of the SDII's management proposal(s) will help ensure that the Institute is run in a way calculated to foster its independence, competence and cost effectiveness. In light of the millions of dollars that will be used to fund this Institute and the important work it will be doing, the

need for a peer review to ensure a successful operation is too critical to ignore. I urge you to reconsider the Department's position on this matter.

Finally, I would like to express my concern over the Defense Department's tentative decision not to include any provisions in the sponsoring agreement to prevent a "revolving door" situation from developing. Unlike many other FFRDCs, the SDII will spend a significant portion of its resources on reviewing research proposals and reports produced by third parties. This review function creates an enormous potential for abuse. Absent contractual prohibitions, for example, an SDII employee could advocate additional funding for a particular technological proposal from a private firm and, six weeks later, accept a job with the firm that submitted the "winning" proposal. Contractual safeguards can be developed to stop such abuses. I urge you to consider doing so.

Establishing a new FFRDC devoted solely to the Strategic Defense Initiative Program is a sensitive, expensive and complex undertaking. Its success will depend upon the Institute's ability to gain the confidence of Congress and the public, and that confidence will depend upon the SDII's independence, integrity and quality of work. The Defense Department's unwillingness to share important, relevant information with Congress about the project, its unprecedented plans to affect the SDII's personnel, and its reluctance to obtain a peer review of the Institute's management proposal(s) or to address potential "revolving door" problems jeopardize the support and confidence the Institute needs. While I intend to pursue legislative remedies to some of these problems, I would welcome an effort by the Department to resolve them administratively.

I would appreciate your response to these concerns as soon as possible. If you have any questions, please have your staff contact Elise J. Bean of the Subcommittee's staff at 224-3682. Thank you for your assistance in this important matter.

Sincerely,

CARL LEVIN,
Ranking Minority Member.●

COSPONSORSHIP OF S. 1654

● Mr. D'AMATO. Mr. President, I rise today to cosponsor legislation introduced by my good friend and distinguished colleague, the senior Senator from Alaska. His legislation, S. 1654, will address a problem that compromises the security of our Nation.

S. 1654 amends title 18 of the United States Code to provide for criminal forfeiture of proceeds derived from espionage activities and offers rewards for information leading to arrests in espionage cases. Specifically, this bill provides for the forfeiture of all proceeds resulting from the commission of any espionage felony. It also extends forfeiture to any proceeds resulting from publication of the stories of convicted spies or productions based upon their crimes. Equally important, S. 1654 establishes a $100,000 maximum reward for information leading to the arrest and conviction of spies.

Mr. President, over the past year we have witnessed an unprecedented amount of espionage cases that have been very damaging to our national security. Indeed, 1985 was the year of the spy. The John Walker case, the Larry Wu-Tai Chin case, and the Ronald Pelton case involved serious breaches of security from which it will take some time to recover. It is unclear whether our efforts to apprehend spies have improved or whether there are simply more spies to catch. Although there has been a bevy of reasons for each case, a common theme has been money. It is imperative, therefore, to do all that we can to eliminate this incentive for spying.

The United States spends upward of $300 billion a year on defense, a major portion of which is devoted toward research and development. We pride ourselves on the technological advantage we have over the Soviet Union. It is this espionage, however, that emasculates our technological advantage. Our retaliatory strike against Colonel Qadhafi's Libya was an incredible display of our highly advanced weaponry. Such high-technology equipment, no doubt, saved the lives of many of our servicemen.

The transfer of such highly classified equipment to our adversaries not only could cost billions of dollars, but also could cost countless lives. I am also very concerned that our strategic defense initiative research may be subject to espionage. I have no doubt that, as we continue this research, the Soviet Union will press hard to obtain this information. It is legislation such as S. 1654 that will help thwart efforts to jeopardize our national security.

It is time that the "E" in the Soviet version of RDT&E stop standing for espionage. Let's stop giving away our edge as the result of greed of traitors.

Mr. President, this legislation should not be pushed aside. S. 1654 addresses one of the most serious national security issues facing this Nation. I urge quick action on this bill, and I urge my colleagues to join me as cosponsors on S. 1654.●

FOREIGN OWNERSHIP IN DEFENSE PROCUREMENT ACT

● Mr. D'AMATO. Mr. President, I rise today to cosponsor legislation introduced by my good friend, the senior Senator from Illinois. This legislation, S. 2152, the Foreign Ownership in Defense Procurement Act, prohibits any defense contract from being awarded to any firm owned or partly owned by a hostile nation.

Mr. President, this is legislation which makes a great deal of sense. In so many different ways, the United States continues to help adversary nations economically. Whether it is through the extension of bank credits to Eastern bloc nations or by allowing most-favored-nation trading status for terrorist-sponsoring nations, such as Iran and Syria, the United States directly or indirectly supports the regimes of these hostile nations. The senior Senator from Illinois has brought to the attention of the Senate another way which the United States supports unfriendly nations: by giving lucrative defense contracts to business firms which are owned by nations hostile to the United States.

Specifically, S. 2152 amends title 10 of the United States Code to require the Department of Defense to exclude from consideration for contracts those firms in which a hostile foreign government or a covered foreign national owns or controls a significant interest. Under this legislation, corporations bidding on U.S. military contracts would be required to disclose significant foreign ownership.

Mr. President, last month, the President courageously retaliated against Libya for its systematic terrorist activities against the United States. This move was in addition to the United States economic sanctions imposed upon Colonel Qadhafi's Libya earlier in the year. The Pentagon, however, has unwittingly allowed the Libyan Government to profit from United States defense contracts. Fiat-Allis, a wholly-owned subsidiary of Fiat of Italy, has been awarded millions of dollars worth of United States defense contracts, including a recent contract for 187 bulldozers for the U.S. Marine Corps. Fiat is expected to be awarded many more lucrative contracts in the future, including work on the strategic defense initiative. Fifteen percent of this company is owned by Qadhafi's Libya.

Although Fiat is trying to rid itself of its Libyan involvement, it is important, nonetheless, that our procurement policies better reflect our foreign policies. The United States cannot allow taxpayers' money to be directed in any way toward the coffers of our adversaries. We should be especially vigilant to prevent terrorist-sponsoring nations from reaping profits from any U.S. contracts. Directly or indirectly, we will only be fueling the flames of terrorism by financing it.

So many times, Mr. President, our economic policy seems to conflict with our foreign policy. Enactment of S. 2152 will correct one of these inconsistencies. With nations such as Libya, Iran, and Syria becoming much more bold with their use of terrorism, the United States should not be sending mixed signals. We must be resolute in our condemnation of such activities. The least painful way is to apply economic pressure. S. 2152 is a great start.

Mr. President, I call for quick action on this important legislation, and I urge my colleagues to join with me as cosponsors.●

TENTH ANNIVERSARY OF THE MOSCOW HELSINKI GROUP

● Mr. D'AMATO. Mr. President, I rise today to pay tribute to the brave men and women who, 10 years ago today, joined to form the Public Group to Promote Observance of the Helsinki accords in the U.S.S.R. This voluntary, unofficial group, commonly referred to as the Moscow Helsinki Group, was established with the goal of monitoring and improving Soviet compliance with the Helsinki Final Act.

As chairman of the Commission on Security and Cooperation in Europe, I am pleased to announce that, in conjunction with this, the 10th anniversary of the founding of the Moscow Helsinki Group, the Commission will release a compilation of the group's documents. Many of these papers, smuggled out of the U.S.S.R. and translated by the Commission's staff, have never before appeared in the West.

The Helsinki Final Act, signed in 1975 by the United States and the Soviet Union, along with Canada and 32 European countries, contains provisions on human rights, trade, and security. The complete text of the act was published in the Soviet Communist Party newspaper, Pravada, on August 2, 1975.

The group, under the leadership of Soviet physicist Yuri Orlov, stressed its loyalty to the Soviet Union, and its desire to cooperate with the authorities in order to ensure that the provisions of the act were implemented in the U.S.S.R. Orlov was joined by other human rights advocates, including: Elena Bonner, Lyudmila Alekseeva, Aleksandr Ginzburg, Petro Grigorenko, Malva Landa, Anatoly Marchenko, Vitaly Rubin, and Anatoly Shcharansky. Following its establishment, Sofya Kalistratova, Ivan Kovalev, Naum Meiman, Yuri Mnyukh, Viktor Nekipelov, Tatiana Osipova, Feliks Serebrov, Vladimir Slepak, Leonard Ternovsky and Yuri Yarym-Agaev became active in the group.

The Moscow Helsinki Group's primary objective was to disseminate information regarding Soviet human rights violations and other actions made in contravention to the agreement signed in Helsinki. The Kremlin responded to the group's efforts with an increasingly repressive campaign designed to intimidate group members and prevent them from exposing flagrant human rights violations in their own country. The primary tool used by group members was samizdat, or underground publications. In total, more than 200 such documents were issued by the Moscow Helsinki Group. These documents, based upon statements from Soviet citizens, were initially circulated to Soviet officials and the embassies of the signatory nations.

The documents concentrated on humanitarian themes consistent with the Final Act: self-determination, free choice of a place of residence, freedom of conscience, the right to know one's rights, socioeconomic rights, the right to a fair trial, and human contacts. In addition, the group attempted to focus particular attention on the plight of prisoners of conscience and those subjected to psychiatric abuse as a tool of official repression. The Moscow Helsinki Group also offered a series of proposals on ways to improve Soviet compliance with the Final Act.

The work of the Moscow Group led to the establishment of other groups within the Soviet Union by citizens in Ukraine, Lithuania, Armenia, Georgia, and Estonia. Specialized groups were organized by and for religious believers, invalids, and victims of psychiatric abuse.

Members of the Moscow Group became the subject of increasingly harsh reprisals, including house searches, threats, detentions, arrests, and trials. Those convicted of such crimes as "anti-Soviet agitation and propaganda" in connection with their group activities were sent off to labor camps, political prisons, and internal exile.

Of the 21 brave men and women who joined the group, 7, including Orlov, Bonner, Marchenko, Kovalev, Nekipelov, Serebrov, and Osipova, remain imprisoned or in internal exile. Two, Ginzburg and Shcharansky, were released after long periods of imprisonment. Three have already served their terms and four have had to leave the U.S.S.R. Only two members, Naum Meiman and Sofya Kalistratova, both elderly and in poor health, have never been arrested for their group activities.

With the impending arrest of Kalistratova, the Moscow Helsinki Group was forced to disband on September 8, 1982. Despite this fact, many of the group's members continue to champion the cause of human rights.

Their steadfast commitment to individual human rights is a shining example of human courage and dedication to the highest principles of human civilization. During the course of the coming days, I will focus on the fate of the seven members who remain in the Soviet gulag. Their cases highlight the repressive nature of the Soviet regime. Furthermore, their treatment underscores the Kremlin's blatant disregard for human rights and lack of commitment to those provisions of the Final Act dealing with this important area.

The Soviet Union voluntarily accepted the responsibility to promote human rights when they signed the Helsinki accords in 1975. Their record since then has been miserable at best. The United States, as a signatory to the agreement, has a moral commitment to speak out in opposition to continued Soviet human rights abuses.

The documents produced by the Moscow Helsinki Group, and other similar groups, provide a clear picture of Soviet behavior in the area of human rights. They are also a testament to the brave men and women who are willing to defend their rights and those of the fellow citizens, often at great personal risk.

Mr. President, I commend the brave men and women who were members of the Moscow Group for their dedication to human rights.●

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1350

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PHARMACEUTICAL EXPORT AMENDMENTS OF 1986

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the unfinished business (S. 1848), which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1848) to amend the Federal Food, Drug, and Cosmetic Act to establish conditions for the export of drugs.

The Senate resumed consideration of the bill.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, last week we began the debate on the drug export bill, S. 1848, which I think is a very important bill.

As I spoke in support of the bill, I brought out that this legislation will not only save American jobs but that it will create somewhere between 8,000 and 10,000—maybe as many as 50,000—American jobs, and these are high paid jobs. And it will prevent export of American biotechnology from this country.

Two of the three top pharmaceutical companies in the world today are non-United States. I believe that there is a tremendous export of American biotechnology because of some of the laws that we have. This bill will help prevent that. It will keep the United States preeminent in the field of pharmaceutical development—preeminent in the world where we should be, and where we have on obligation to be because of the wealth and the opportunities that this society and its tremen-

dous enterprise capitalistic system provides.

It will decrease our balance of payments deficit we estimate $500 million to $600 million a year, and it might be more than that. It will not increase the health risks to foreign consumers. It will not erect trade barriers that invite retaliation, and it will not cost taxpayers any money.

There are very few bills that could make those type of claims. But this is one of them. Under our current policy, the Food, Drug, and Cosmetic Act forbids the export of most pharmaceuticals until they receive approval from our own Food and Drug Administration or the USDA, even though the destination is a country where the drugs have already been approved. Sometimes it takes up to 10 years to go through the FDA's safety and efficacy process. It may cost $7 million to $8 million to develop a new drug which has already been tested as safe and effective by the FDA equivalent countries—I mean by that, countries that have as good a scientific food and drug system as our country has.

One of the problems that we have is that our pharmaceutical companies, in order to receive approval from the Food and Drug Administration, have to go through a very long, involved detailed process. They inform us that for some reason some of these foreign lands across the world are a little bit more efficient than ours, and some of these very good, lifesaving, health-promoting drugs get on the market overseas before they get on the market here. We have seen that time after time.

Well, it is arrogant for us to say that the Food and Drug Administration of the Government of the United States of America, or the USDA, are the only people who can handle these problems. Let us get to the real bottom line on this bill. I think the real issue is ignored by the critics of this bill. The real issue is the impact of this legislation, this bill, when compared to the results of current policy on the foreign consumer and others.

Under current policy, every drug which may be exportable under these amendments can be manufactured at foreign plants under few, if any, controls and supplied anywhere in the world. That is current law.

Thus, all of the potential problems the few critics of this bill claim can happen if these amendments are passed are happening right now because all an American company has to do is move offshore. And in moving offshore they can manufacture any drugs they want, and disseminate them worldwide without any regulation.

This bill will place some constraints on that. There is, in short, no evidence that this bill will affect the types of drugs available to foreign consumers at all with the exception of possible tropical disease drugs, while the bill, through its requirements, insures greater quality and imposes much greater FDA control on those drugs produced in the United States and exported.

Is there any evidence that the current ban on the export of unimproved drugs by our FDA, but approved by other nations, actually saves any lives? The answer is a resounding no.

Is there any evidence that the defeat of S. 1848 will prevent any injury to foreign consumers? The answer is a resounding no.

Will S. 1848 improve the situation for foreign consumers? The answer is just as firmly yes.

This bill is a net improvement for foreign consumers. It will save American jobs and it will lower our balance-of-payments deficit.

I say let us cut through the rhetoric and let us get this bill passed. I am prepared to proceed with amendments. As I understand it, the distinguished Senator from Ohio has a number of amendments that he feels are essential. I would be more than happy to proceed with those amendments at this time, with the understanding that votes will occur tomorrow, and we can stack those votes or consider them as the distinguished Senator from Ohio, the majority leader, and the minority leader desire.

So with that, I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, when the debate on S. 1848 commenced last Thursday, I described the bill as the worst piece of special interest legislation to pass the Labor Committee this year. I stick by that assessment. There is simply no justification for exporting drugs which we have not cleared for safe and effective use in our own country; no justification whatsoever.

There is no effective means of restricting the re-export of transshipment of these drugs to the Third World. In other words, there is no way of preventing the drugs from being shipped to one country and than being shipped immediately thereafter from that country to another country.

The FDA has said publicly that they are in no position to provide any protection in that event. This bill will only add to the problem of dumping unsafe and ineffective drugs on the Third World. This bill, as I said before, will make "Made in America" a dirty word throughout the world. When this proposal to allow the export of unapproved drugs was first brought before Congress, editorial opinion was scathing. The Philadelphia Inquirer said:

"THE COST OF EXPORTING TROUBLE."

It has been labeled as a jobs bill but in fact it's a greed bill. It's legislation that could cause injury, illness or death. It's a bill that places private profits ahead of public responsibility. It would confirm in many minds that the United States cares less for their well-being than for a fast buck.

The legislation would allow U.S. drug companies to produce new drugs for sale in foreign nations even if those drugs have not been approved for use at home. Current law requires that drugs manufactured in the United States for export meet domestic safety and efficacy standards.

Senator Hatch and others, led mainly by American drug makers, argue that the existing law forces U.S. companies to open foreign production facilities to get around the safety restriction. (Current law allows U.S. drug firms operating outside the United States to manufacture and sell products abroad that do not meet domestic safety and labeling requirements.)

□ 1400

Supporters claim that if the Hatch bill is enacted, it could create as many as 50,000 jobs and increase drug-export sales by $1.76 billion in five years. Other studies indicate those estimates are vastly inflated. Regardless of the actual numbers, what's the price of changing the law?

Critics claim that the bill would allow American drug makers to flood the markets with products that are untested and would be used inappropriately. These products would be dispensed by untrained personnel whose only source of information would come from drug company salespeople. Few Third World nations have any type of effective drug regulation and most rely on U.S. data.

Jean M. Halloran, director of Consumer Union's Institute for Consumer Policy Research, which opposes the bill, notes that it would allow U.S. drug companies "to use people in other countries as guinea pigs."

"If a drug is not good enough for us, we shouldn't inflict it on our brothers and sisters abroad," she told the House subcommittee. "That may not be the motto of a successful drug company executive, but it's the credo of a good world citizen."

Mr. President, I ask unanimous consent that the entire editorial be printed in the RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Philadelphia Inquirer, Aug. 6, 1984]

THE COST OF EXPORTING TROUBLE

It has been labeled as a jobs bill but in fact it's a greed bill. It's legislation that could cause injury, illness or death. It's a bill that places private profits ahead of public responsibility. It would confirm in many minds that the United States cares less for their well-being than for a fast buck.

The legislation would allow U.S. drug companies to produce new drugs for sale in foreign nations even if those drugs have not been approved for use at home. Current law requires that drugs manufactured in the United States for export meet domestic safety and efficacy standards.

The U.S. Food and Drug Administration and the World Health Organization have endorsed the legislation. "We believe the governments of other nations are in the

best position to assess their own health needs," Dr. Mark Novitch, acting FDA commissioner, recently told a House subcommittee considering the bill, which is being sponsored in the Senate by Orrin Hatch (R. Utah).

Sen. Hatch and others, led mainly by American drug makers, argue that the existing law forces U.S. companies to open foreign production facilities to get around the safety restriction. (Current law allows U.S. drug firms operating outside the United States to manufacture and sell products abroad that do not meet domestic safety and labeling requirements.)

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Supporters of the change argue that they have included some safety provisions to protect against abuses, but those provisions are vague and ridden with loopholes.

For example, the FDA will be required to prepare lists of foreign countries deemed to have "adequate" drug regulation systems. If one of those countries approves a U.S.-made drug for a particular use then that approval carries the same weight as an FDA endorsement and gives the manufacturer carte blanche to distribute it anywhere in the world, regardless of the quality of the testing standards in the approving nation.

Jean M. Halloran, director of Consumer Union's Institute for Consumer Policy Research, which opposes the bill, notes that it would allow U.S. drug companies "to use people in other countries as guinea pigs."

"If a drug is not good enough for us, we shouldn't inflict it on our brothers and sisters abroad," she told the House subcommittee. That may not be the motto of a successful drug company executive, but it's the credo of a good world citizen."

Mr. METZENBAUM. Mr. President, as a matter of fact, it is interesting that what the Philadelphia Inquirer said about this legislation is very similar to that which many other citizens of the world have stated in writing in to us on this subject. They have questioned the Hatch-Kennedy bill. They have said, "Why are you going to do this? Why do you permit drugs to be sold and sent throughout the world that are not good enough for your own people? Yet you want our people to use them."

I agree with them. I do not believe that any time since I have been in the Senate have I heard such an outcry of opposition from all over the world as that which I have received in connection with this particular piece of legislation.

Mr. President, the proponents of this legislation claim that it is a jobs bill. The export legislation will not create a bonanza of new jobs in the U.S. pharmaceutical industry.

It is interesting to note that today I sat in a Judiciary Committee hearing and I am told that it is a new jobs bill because they are going to change the definition. Then we have various pieces of legislation around here and all claim to be jobs bills.

Then we are told if we pass this legislation, it will make it possible to have the jobs here in America rather than overseas for the drug companies. The facts are that the drug companies have their overseas operations even at this moment. If they thought they could do that and it was in their best economic interest to do so, they would manufacture those products overseas.

They want this legislation because they need it in order to be able to sell their products made in this country overseas.

When the Philadelphia Inquirer calls it a greed bill, it uses appropriate language.

Let me tell you what the Los Angeles Times said about this bill.

EXPORTING TROUBLE

New drugs must pass the toughest approval process in the world before doctors can prescribe them in this country. The tests can take years and delay the availability of some new medicines but they provide a margin of safety for patients.

The Reagan Administration says the delays are bad for the pharmaceutical business and ultimately drive American jobs to foreign countries. It is backing a bill that would allow business to export medicine that has not yet been approved for American consumption.

That is a bad idea, a positon that says that it is all right for foreigners to face health risks that Americans do not face, a position that would turn the rest of the world into guinea pigs.

A bill that would repeal the current ban on such exports, sponsored by Sen. Orrin G. Hatch (R-Utah), is tentatively scheduled for a vote Wednesday by the Senate Labor and Human Relations Committee. Although the bill does have some safeguards. It should be rejected.

Under Hatch's proposal, which the Administration supports, medicine that has passed the first level of toxicity testing by the Food and Drug Administration could be exported. But it is often in subsequent tests that unexpected side effects or other problems are discovered.

Hatch's bill would also require that a country with respective drug-testing standards, such as West Germany or England, approve the new American drug before it is exported.

Mr. President, I should point out to you that the bill that is before us today has 15 countries that are included in it, countries to which the drug may be exported. It is my understanding that there is going to be an effort made to even increase that number of countries and there will be no safe way of prohibiting the transshipment from those countries to other nations throughout the world.

The Los Angeles Times continues:

If a country with relatively high standards disapproved a drug, the Food and Drug Administration would cancel its license. One or more of those countries would have to approve a drug for its own use before the drug could be exported to countries with weak standards or none at all. That is not a good substitute for making the drug pass the most stringent standards—those of the United States.

The economic argument cannot be used to justify health risks at home or abroad. Lawmakers should not allow the export of medicine until it has been proven good enough for Americans.

Mr. President, I ask unanimous consent that the entire Los Angeles Times editorial be included in the RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Los Angeles Times, Sept. 11, 1984]

EXPORTING TROUBLE

New drugs must pass the toughest approval process in the world before doctors can prescribe them in this country. The tests can take years and delay the availability of some new medicine but they provide a margin of safety for patients.

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Hatch's bill would also require that a country with respectable drug-testing standards, such as West Germany or England, approve the new American drug before it is exported. If a country with relatively high standards disapproved a drug, the Food and Drug Administration would cancel its license. One or more of those countries would have to approve a drug for its own use before the drug could be exported to countries with weak standards or none at all. That is not a good substitute for making the drug pass the most stringent standards—those of the United States.

The Administration backers, including representatives of the Food and Drug Administration, also argue economics. Some U.S. pharmaceutical companies have located plants abroad because drugs manufactured abroad are not subjected to such intense scrutiny and can often reach international markets years ahead of American products. That costs American businesses dollars and American workers jobs, according to the Ad-

ministration. But if the new drug export is allowed, will those jobs be relocated in the United States despite the lower wages and other advantages in foreign countries?

The economic argument cannot be used to justify health risks at home or abroad. Lawmakers should not allow the export of medicine until it has been proven good enough for Americans.

Mr. METZENBAUM. Mr. President, initially, the drug industry claimed that up to 50,000 jobs could be created over the next few years by allowing the export of unapproved drugs. After the reliability of that estimate was discredited, the industry came back this year with a new estimate. Instead of 50,000 jobs, they now say it is 8,000.

The Labor Institute of New York says the figure is actually 3,000 jobs.

As I pointed out the other day, that union, which has the most number of employees in the pharmaceutical industry, has itself come out against the legislation saying it is not worth it to pass bad legislation or to cause harm to peoples throughout the world by claiming that it will create new jobs.

Any job increase resulting from drug export legislation would very likely be only in the production area since most companies' research, management, financial and marketing operations remain in the United States regardless of production locations. At the same time, pharmaceutical production is not at all labor-intensive. As David B. Sharrock, president of Merrell-Dow U.S.A., told the committee in its drug export hearings this year, it is customary for companies exporting drugs to produce only the active ingredient in bulk form in U.S. plants and then ship the product to finishing plants at overseas locations at or near the market for which the drug is ultimately destined.

Clearly, S. 1848 is not a massive jobs bill. And there is more than jobs at stake with this legislation as can be gathered from the following quotation from the International Chemical Workers Union, which represents, 5,600 members in 19 pharmaceutical plants around the country.

In commenting on this legislation, it said:

> Even if a few jobs would be created through this legislation, ICWU does not agree that this advantage outweighs the tremendous ethical disadvantages of the bill.

Mr. President, yet another claim offered by the proponents of this legislation is that the industry desperately needs this bill to remain competitive with foreign competition. But the American pharmaceutical industry does not need this bill to compete with foreign firms.

In December 1984, the Department of Commerce released a report entitled "A Competitive Assessment of the U.S. Pharmaceutical Industry." If you look at that report, you will arrive at the same conclusion. That is that no assistance is needed.

Far from decrying supposedly restrictive regulations on the export of unapproved drugs, the Commerce report stated:

> With respect to regulation, the U.S. drug regulatory system enjoys a worldwide reputation for the highest standards of drug efficacy and safety and helps to ensure that U.S. Government-approved pharmaceuticals have a favorable image abroad.

□ 1410

> Thus, while the stringent United States drug approval process may be costly and time consuming, it also functions as a competitive advantage for the United States industry.

So the American pharmaceutical industry should be trying to protect the quality and integrity of the "Made in America" label rather than attempting to tarnish that label while lobbying for the export of unapproved drugs.

Mr. President, I want to be very candid with my colleagues. The pharmaceutical industry has been extremely effective in lining up support for this bill. But that does not make it right. I do not know when I have seen a more effective lobbying job done than that which has been done in connection with this particular piece of legislation. Some have said to me, "Why are you going to the floor to fight it? The other side has the votes."

I am not in a position to count the votes and I do not know whether they do or do not, but I am willing to accept that on the basis of their representation. But it is my strong belief that the issue must be made with respect to this bill, that the opposition must be heard, that the American people have a right at least to be alerted to what the pharmaceutical manufacturers of this country are doing to make "Made in America" a dirty word thoughout the world.

There is not any logic or reason to pass this bill other than the fact that the lobbyists have apparently lined up the votes. But lining up the votes does not make it right. It is as wrong as it could possibly be to pass this legislation and whether we will rue the day in a year or 2 years or 5 years is not the question. There is no doubt about it: that day will come when some pharmaceuticals, some drugs made in this country, will be used in some other nation of the world, a Third World nation, and hundreds and perhaps thousands of children or senior citizens or people generally will pay the price, either with their lives or long-lasting illness.

Why? Why are we handling this bill on the floor of the Senate today other than to satisfy the greed of the pharmaceutical industry?

Mr. President, one of the other claims that those who support this legislation make is that we need a bill to circumvent the FDA approval process. Mr. President, we should allow the export of unapproved drugs because the FDA supposedly takes too long? Now, come on. Does anybody really believe that that makes sense? If that is the case, why not eliminate the FDA and let the drug companies determine what the American people should ingest or should use?

For our own people, we say, "Oh, no. We do not want that. We do not want to change the laws with respect to the approval process for drugs in this country. But let us not worry about the people in this Third World country; they are not really that important. If a few of them die, what difference does it really make?"

I think it makes a lot of difference, a tremendous amount of difference. I think every child has a right to live, every human being has a right to live, every person has a right to be treated well and be able to take drugs from this country without being uncertain whether they may be harmful to their bodies.

Yet we are saying that little baby over in Thailand or Taiwan or Bangladesh or Pakistan or some other part of the world, that little child who is every bit as precious to its mother as the little baby here, in this country, is not going to get the same amount of protection. Why? Because the pharmaceutical industry wants to be able to sell their drugs over there without the proper clearance.

They will say, "Oh, but, Mr. Senator, you are wrong about that. Mr. Senator, you do not understand. We are only going to sell these drugs in countries where they are going to check through them themselves."

Mr. President, the facts are that most of those other countries, with some exceptions, do not have the same kind of processes that we do and that our Food and Drug Administration, with all its shortcomings, still does a better job than almost any other nation in the world.

I am told there is a proposal that will come to us before consideration of this bill is concluded to add seven more countries to the list already in the bill. We know that the Secretary of Health and Human Services has the right under the bill before us to name a number of other countries in addition to those that are specified in the legislation. I suppose, in the world in which we live around here in Washington, if they hire the highest priced lobbyists and the best lobbyists and the ones who know their way around Washington, it will not be hard to get some little country in some far-off place in the world to get their products approved as long as they can hire the right lobbyist.

In February 1985, the Secretary of HHS announced changes in the FDA-approved process which she said "will dramatically speed the Federal Government's approval of new drugs." If

that is the answer to moving forward the process and making it a shorter period of time, I have no problem with that. The Secretary hailed these changes as the "most important in 20 years."

The Secretary also said these new procedures would cut 20 percent off the approval time for new drugs. So according to the administration, the problem has been solved. If the industry still has difficulty with the approval process, let them come forward with a proposal for further change in that process instead of proposals to circumvent the FDA process by exporting unapproved drugs.

I have seen this bill wrapped in the mantle of trade legislation. That is an important issue in Congress. Believe me, the attempt to portray this bill as a trade bill is a ruse, nothing more, nothing less. Drug export legislation will not prompt American companies to relocate existing overseas operations in the United States or to establish new operations in the United States.

Proponents claim that S. 1848 is reform legislation that will curb the practice of American drug companies locating their production facilities abroad as they currently do to circumvent the prohibition against unapproved drugs. They imply that enactment will induce firms to repatriate some of their facilities in these countries. These claims are wholly unfounded. There is not a word in the bill to that effect and there is not a company that I know of who has come forward and said that upon passage of this bill, we are going to bring back to the United States our manufacturing operations.

There is nothing in the bill to keep them from maintaining overseas the facilities they presently have nor from building new ones. Indeed, since these countries allow the export of unapproved drugs, particularly to the Third World, the incentive remains strong for U.S. companies to continue to operate from overseas locations.

In his testimony before the committee's June 5 hearings, David B. Sharrock, president of Merrell Dow Pharmaceuticals U.S.A., stated:

> As foreign countries fiercely compete with the United States for capital investments and new jobs, these countries are prepared to create favorable economic incentives to secure such investments.
>
> Consequently, once a commitment to supply an active ingredient from a specific country is made, the approval of the drug in the U.S. will not bring the production of this active ingredient to our country.

For those companies seeking to establish new plants, general business considerations rather than the issue of export restrictions dictate the decision about plant location. At hearings on tax reform before the House Ways and Means Committee on July 11, 1985, Richard M. Furland, chairman and chief executive officer of Squibb said:

> Almost every country has its own version of a food and drug administration, which all but forces pharmaceutical companies to do business "in-country". Exorbitant tariffs also requires us to operate abroad if we are to compete for foreign markets with the large European and Japanese drug firms. In other words, if Squibb is to tap British, French, German and other European markets, it must be inside common market tariff barriers and subject to local food and drug rules.

□ 1420

In fact, American drug companies that sell their products in foreign markets have adopted methods of operation that rely on overseas plants regardless of what U.S. export policy may be. According to Mr. Sharrock, the president of Merill Dow:

> It is customary of multinational pharmaceutical companies to have facilities in major foreign countries where their drugs are sold, to carry out tableting, encapsulating, and other operations to make finished drug dosage forms. The active ingredients, however, that go into making these finished dosage forms are typically produced at a small number of separate plants dedicated to manufacturing active ingredients of specific types. The active ingredients are then shipped to the local plants producing finished dosage forms.

Mr. President, proponents also claim that this legislation will solve all the woes of the biotechnology industry. But in reality, S. 1848 will not end overseas technology transfers in the biotechnology industry.

Proponents argue that the ban on export of unapproved drugs forces biotechnology companies to enter into partnerships with foreign companies to produce their drugs overseas. In reality, foreign partnerships have become an integral component of the way American biotechnology industry does business and these partnerships will continue irrespective of U.S. export restrictions.

In an extensive analysis of the biotechnology industry in the Washington Post of December 17, 1984, and May 19, 1985, analysts and industry spokespersons had the following to say:

> For most companies, at the present stage of development, relationships between corporations that cut across national lines are beneficial to both parties. The technology transfer goes both ways.

Mr. Harvey Price of the Industrial Biotechnology Association stated:

> You need a Japanese partner to be successful in Japan—it's just the nature of the marketplace.

According to the Post, Genentech's foreign partners have spent $47 million for overseas clinical tests on just one of Genentech's products alone. According to the company's vice president, Thomas Kiley: "These arrangements are vital to our growth."

The overseas transfer of technology is, according to the Post series:

> An inevitable part of doing business overseas and most companies agree that the clear short-term benefits of cooperation outweigh the fuzzy long-term risks.

Clearly, economic and research concerns far outweigh the laws regulating drug exports in determining technology transfer in the biotechnology industry.

S. 1848 is not reform legislation. S. 1848 will prove an embarrassment to us over the years if it passes. It does not even include antibiotics under its provision as is strongly recommended by experts in the field. Last year this proposal was accurately pegged a greed bill. But, this year proponents are back knocking on Congress' door. They believe that the health and safety of foreign consumers is not as important to Congress as the bottom line on the profit sheet of America's most profitable industry.

We may have the strictest standards for safety among all but I do not hear anyone advocating less tough standards for the FDA. What I do hear people saying is "let's circumvent the process for drug exports. After all, as long as we don't have to risk using the drugs, who cares?" I think many of us do care.

We are told that there are safeguards. The best safeguard is the one we have right now—if a drug is not proven safe and effective for use in the United States, do not export it.

Mr. President, I will address myself further to the issues in connection with this bill and will be prepared to offer amendments thereto at a subsequent point. I yield the floor.

Mr. HATCH. Mr. President, I have listened, again with intriguing interest, to the distinguished Senator from Ohio make basically the same arguments he made last Thursday evening and I would refer those who are interested in what this bill really is about to the transcript of that date and my remarks made at that time. Also to the remarks of Senator KENNEDY because virtually everything that the distinguished Senator from Ohio has said, virtually every sentence could be refuted. That would take too much time and I think would be a waste of everybody's time. But let me just mention a couple of things and make that blunt statement; that we disagree with basically everything the distinguished Senator from Ohio said, although we respect his right to say the things that he has said.

With regard to the international opposition, the Senator is armed with communications from an impressive array of foreign groups opposing the bill, but let us not be misled. These communications are the result and are in essence the product of a letter-writing campaign. It is coordinated by a

European-based social activist organization, Health Action International and its sister organization, the International Organization of Consumers Unions.

Now, I note here that the foreign consumers unions tend to be more political and radical than their U.S. counterparts.

The letters all are similar in their rhetoric and misstatements that this legislation will somehow worsen the problem of dangerous drugs on today's world markets, and especially Third World markets. With few exceptions they imply an ignorance of the bill itself. The people who wrote the letters either have not read the bill or do not understand it.

These organizations are well-meaning and I am sure that they do good work on other issues. However, I think it is important and useful for us to recognize the HAI network's broader agenda so that we understand their real reasons for opposing this bill. That agenda grows out of the class-oriented exploiter-exploited view of events that Marxism has been teaching for the last 100 or more years. They want to undermine patent protections, to greatly restrict the types of pharmaceuticals available in the developing world, thereby condemning many Third World inhabitants to needless pain, suffering, and death; to block the free enterprise system in key industries such as health care; to curtail at any cost the activities of Western multinational corporations; and, most importantly, to establish a global welfare state by the massive but shortsighted shift of resources from the developed to the developing countries. The passage of this bill would be a step backward in achieving this broader agenda, and this is the reason I believe we have not received a single constructive letter from any of these groups. It is always total, irrevocable opposition to any change in our current pointless, counterproductive law. It is just that simple.

Now, this bill has been criticized as drug export legislation which will not create a bonanza of new jobs in the pharmaceutical industry. The distinguished Senator from Ohio has made that point here again today although there have been estimates ranging from 8,000 to 10,000 to 50,000 jobs. Now, the bill's proponents have never claimed that S. 1848 will create a bonanza of new jobs in the U.S. pharmaceutical industry. The pharmaceutical industry is not as labor intensive as many and the committee's expectations I think have been realistic. It will, however, create an additional 8,000 to 9,000 to possibly 10,000 jobs by reasonable estimates. This is a very significant number whether or not it consitututes a bonanza. Now, some have estimated as high as 50,000. I think that is possible. But to be more conservative we have said 8,000 to 10,000 and we stand by that. The biotechnology industry alone estimates 5,000 jobs and that is only part of this industry. As the committee report points out, any needless loss of jobs and loss of export payments is unacceptable. It really is bad.

Another criticism by the distinguished Senator from Ohio is that S. 1848 will not end U.S. overseas transfers in the biotechnology industry. Technology transfer is a problem for biotechnology firms.

□ 1450

True, foreign partners are often necessary to conduct clinical trials abroad, steering the drug through foreign regulatory agencies and their foreign marketing systems in the process. Technology transfers on a basic level are common and nonobjectionable. But none of these contemplates a transfer of secret techniques for production which are not—and I emphasize are not—willingly transferred and which sap the competitive advantage of American innovators.

I would like to refer back to my comments of Thursday for a refutation of most of the Senator's points. I would, however, like to reemphasize the reason why this is not a bill which will dump unsafe drugs abroad and why it is better policy than the current law.

We want to allow the export of not-yet-approved drugs to a limited set of developed countries under restrictions and safeguards designed to ensure that unsafe drugs will not be dumped on undeveloped nations ill-equipped to deal with them. I hasten to add that in no case could drugs be exported if they have been rejected by FDA or USDA—we are only talking here about drugs which have not yet been approved by the U.S. agency. Chief among the bill's protections are the requirements that each drug have been approved for safety and efficacy by a foreign regulatory agency comparable to our FDA and that each be produced in conformity with the same quality as domestically approved drugs.

Opponents for changing our current policy attack the bill on health grounds, claiming that it will permit unsafe unapproved drugs to be sold in undeveloped countries. Senator KENNEDY and I have been sensitive to these charges and have built into the bill protections that will assure that no U.S. company is involved in unauthorized shipments, and that the drugs exported under these amendments have first passed muster before responsible foreign officials.

That is a tremendous improvement over current law. All these criticisms that the distinguished Senator from Ohio seems to be raising also apply to current law. We are trying to resolve those problems while at the same time preserving jobs, preserving our own preeminence in biotechnology, rather than have it transferred and exported from our country. At the same time having a better balance of payments—not only because today our companies move offshore to get around these laws, but also because once the drug is approved by FDA, we have to import a drug that could have been manufactured here, probably at much less cost. We have to import them in order to have them in our country.

But the fundamental response to critics is that, when judged by its impact on foreign consumers, this bill will have no negative effects compared to the situation under current law. This is a point the critics never address, although, for the first time, I have heard them say that there are some good things about the bill.

Under current law, any drug approved or unapproved, may be made overseas and shipped to any country in the world where it is permitted. Thus drugs not approved by the FDA, under current law, are circulating freely abroad and are available right now to foreign consumers. It follows that, to the extent drugs exported from the United States under these amendments find their way to unauthorized countries, the situation is no different than it would have had this bill not passed. We have made a pretty good case as to ills that this bill does correct and that this bill does work on.

I suspect that, in this area, no bill will do everything it would take to satisfy the Senator from Ohio, and no bill, in this country or elsewhere, will satisfy the critics he has cited.

With regard to some of the editorials he has cited thus far, the editorial writers have not called my staff or Senator KENNEDY's staff, to my knowledge. They have just written what they think the bill means, without fully understanding it. They have an agenda, and that agenda is anti-United States, anti-U.S. multinational corporations, anti the U.S. ability to sell drugs overseas.

They have a zero-risk mentality with regard to pharmaceuticals. There is not a pharmaceutical today, not one, not even aspirin, that has zero risk. All have a down side. We all need to know that and understand that.

There are risks and there are benefits for drugs. We want to make sure the benefits always exceed the risks. I think this country has been the world leader in that regard.

On the other hand, it is arrogant to think that this is the only country in the world that has a safety-in-efficacy process, when there are many countries just as good as we are. We have named them in the bill.

Mr. President, I ask unanimous consent to have printed in the RECORD, an interesting and, I believe, accurate article published in Private Practice, in

February 1986, by Armistead M. Lee and C. Joseph Stetler, entitled, "Should the FDA Regulate the Rest of the World?"

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Private Practice, February 1986]

(By Armistead M. Lee and C. Joseph Stetler)

SHOULD THE FDA REGULATE THE REST OF THE WORLD?

For several years efforts have been made to remove the statutory ban on the export of medicines not approved for use in the United States. The present law is unmatched in any other industrialized country and, in effect, imposes Food and Drug Administration regulatory decisions on the rest of the world.

It now appears that Sens. Orrin Hatch and Edward Kennedy may agree on appropriate legislative language. If they do, chances for favorable action in the Senate are good, but action in the House is still in doubt.

Hearings last year in both houses of Congress supported the reform in principle, and the bill sponsored by Hatch was endorsed by the pharmaceutical industry and the FDA. There seemed a consensus that it was illogical, at a time of mounting deficits in our balance of trade, that we should continue to hobble an important exporting industry with self-imposed restrictions.

Foreign governments have not asked to be protected by this export ban. Mark Novitch, MD, speaking in support of the bill in his capacity as acting commissioner of the FDA, said, "We believe the governments of other nations are in the best position to assess their own health needs."

Many officials and physicians in other countries have expressed irritation at the arrogance of Americans who presume to make risk-benefit judgments on their behalf. Finally, Dr. John Dunne supported the repeal of the American export ban in testimony before a House subcommittee chaired by Rep. Henry Waxman, D-Calif. Dr. Dunne is with the World Health Organization, an agency which claims to speak for the consumers and patients of the world.

DETERMINED TO BE HEARD

But the consensus was not quite total; radical consumer activists, a diminutive but very vocal group, were determined to be heard. The International Chemical Workers Union expressed in opposition to the bill. Unimpressed by the evidence of manufacturers, who explained that the export ban had forced them to make certain products abroad which they would have preferred to produce in the United States, the union declared that "the jobs that would be created are outweighed by the tremendous ethical disadvantages of the bill."

Dr. Sidney Wolfe of Public Citizen's Health Research Group spelled it out. Citing drugs that were approved in the United Kingdom, but not the United States, and later withdrawn because of adverse reactions.

The activists seize upon a kernel of truth, which they proceed to amplify, through extrapolation, to a grotesque generality. It is quite true that the manufacturers of drugs, like those of other commodities, seek to differentiate their products. But it does not follow that they can succeed by the same tactics as the makers of cosmetics or costume jewelry, who use the mass media to appeal to the whimsy of the consumer.

Pharmaceutical manufacturers first must persuade a stern regulatory agency that their products are safe and effective for a sizable portion of the relevant patient population. Such persuasion requires solid evidence, which can be obtained only through many years of controlled studies of animals and humans. If this hurdle can be surmounted, manufacturers must then persuade an audience of conservative and skeptical physicians and pharmacists that the new drug is safer or more effective than the one they have been using. Moreover, the manufacturer's promotional message must, in most countries, meet the standards set by the regulatory agency and provide relevant warnings of side effects and contraindications.

Similarly, it is quite true that some of the observed differences in prescribing and dispensing practices, nationally and internationally, are not entirely rational. It may be true, as Medawar maintains, that the Spaniards use too many appetite stimulants and that in many countries some combinations of drugs are recommended for conditions where single entity medicines might be preferable and cheaper.

But Medawar and his colleagues attempt to erect too elaborate a structure of dogma on too narrow a foundation. Like the other apologists for the highly restrictive national formulary of Bangladesh, he sees the "proliferation" of drug products as a major impediment to public health and economic development in the Third World. Implicit in this criticism is the assumption that, in all countries, there is a single "drug of choice" for all patients with the same disease. This is typically an older drug, available generically, and one to be included in the limited national formulary of "essential" drugs. All others are "me-too" drugs, artifically differentiated, and imposed on gullible prescribers and dispensers by unscrupulous multinational manufacturers. Not only are these products needlessly expensive but, according to the script of the activists, they are frequently toxic and ineffective. They may not even be approved in the United States, which means that they are being "dumped" on defenseless Third World consumers.

The ideologues of HAI see such anti-social behavior as a natural consequence of competitive market forces. Those of us who have observed the scene from the inside acknowledge the vigor of competition, but see its effect quite differently. We believe it impels manufacturers to achieve an advantage by developing more effective drugs with fewer side effects. And we are puzzled by the perverse logic of the activists who argue that consumer costs will be lowered by reducing the number of drugs on the market.

It is not necessary to depend on the lessons of freshman economics, where we were told that curtailing supply tends to raise prices. We can look at Norway, hailed by Medawar as a model which he believes his own country, Great Britain, should follow. He notes that the national list of preparations available in Norway is about one-third of the number available in the United Kingdom. But he fails to note that per capita expenditure for medicines in Norway has been almost twice that in Britain.

If a preference for ideology over careful observation is one characteristic of the true believers, another is their tendency toward what might be described as "semantic shift." For example, when a death is reported as having been "associated with" the ingestion of a particular drug, they take it as fact that the death was "caused by" the drug. Also, despite the reminder, in the preamble to the WHO's Essential Drug List, that "exclusion does not imply rejection," the activists tend to assume that products not included have been found to be either ineffective or less effective than those on the list.

We saw an example of this tendency in the well-orchestrated campaign against removing the current U.S. ban on the export of drugs not yet approved by the FDA. "Unapproved" was widely interpreted as meaning "disapproved." The stage was set for this gambit by the differences in the approval standards of various regulatory agencies and the consequent differences in the prescribing information on individual products as listed in the various national compendia. The fact that foreign reference guides are more abbreviated than our own Physician's Desk Reference invites the production of sensational books such as "Prescription for Death; The Drugging of the Third World."

* * * * * *

Similarly, it is hard to reconcile a preoccupation with the cost of drug therapy with an attempt to impose on the rest of the world the prevalent American distaste for fixed combinations—which comprise a substantial share of Dr. Wolfe's "Pills That Don't Work." All would agree that where a single entity drug would suffice, it makes little sense to use a mixture. But when the doctor decides that concomitant therapy is needed, and the patient needs both an antihypertensive and a diuretic, or an antibiotic and a fungicide, it is almost invariably cheaper and more convenient to use a combination.

THORNY PROBLEM

None of the contradictions of the international consumerists is quite as thorny as the problem of reconciling their other complaints and objectives with their efforts to fit into the overall concept of a New International Economic Order. This goal has been pursued in the halls of the U.N. General Assembly, ECOSOC, UNIDO and UNCTAD by delegates from most of the less developed countries, who complain of adverse terms of trade and seek emancipation from the alleged exploitation of multinational corporations. While a great many non-Communist regimes have joined the crusade, they nevertheless have taken ideological sustenance from the teachings of Marx and Lenin, who preached that as competition erodes profit margins in the markets of the industrialized countries, capitalists will seek investments in the lesser developed countries, where labor—the base of all value according to the "true faith"—is relatively cheap.

But the ideology of IOCU and HAI is not pure Marxism. Although it seeks to expand the public sector, particularly in the field of regulation, the movement also seeks to encourage indigenous entrepreneurs and capitalists in the lesser developed countries. They are the "good guys" in white hats, with the welfare of the masses at heart. It is the multinational manufacturer who allegedly "dumps" ineffective and poisonous drugs and subverts the local medical and pharmaceutical professions with gaudy ads and tempting gifts.

The problem with this scenario is that it is contradicted by the daily observations of the Third-world consumer. He notices that

the products which fail most are generally made by indigenous companies, and that the exaggerated claims are more likely to come from local firms. If chloramphenicol is being used too freely, then most of the blame should go to the native firms which produce the vast bulk of this antibiotic. Certainly Parke-Davis cannot be blamed for the fact that it is the most widely used antibiotic in mainland China.

And if clioquinol (Enterovio-form) should not be used at all, as the consumerists insist, then the message should go not to Ciba-Geigy, which has discontinued its production and distribution, but to the many indigenous producers, as well as the national governments in many Third-world countries which persist in believing that the drug is relatively safe and extremely effective.

The priority which HAI assigns to the replacement of multinationals by local firms is evidenced by the prominence this issue has been given in the organization's draft of an International Marketing Code, which it hopes to persuade WHO to accept. It is also demonstrated by the pronouncements, in HAI bulletins, that the restrictive and confiscatory new drug policy adopted in 1982 by Bangladesh is a proven success. Where is the proof? It could hardly be demonstrated that there has been greater accessibility and lower prices for the drugs needed to keep cholera in check. The crowning proof of success is the undisputed fact that the market share of the multinationals has declined and that of the local manufacturers, particularly the producers of traditional medicines such as Ayurvedic and Unani, has risen.

POSITIVELY FRIENDLY

Will the professional consumerists succeed in pushing their marketing code through next year's World Health Assembly? Clearly, they feel less confident than in the old days, when they found it easy to capture other specialized agencies of the United Nations. In 1982, the Assembly decided to defer action on the Code and to give IFPMA a chance to demonstrate its own newly approved voluntary code.

Moreover, Director-General Halfdan Mahler can no longer be counted on to denounce the pharmaceutical industry. Indeed, he appears to have grown positively friendly to the multinationals recently. HAI luminaries were audibly indignant when they learned that Dr. Dunne, the WHO chief of pharmacy, actually had testified in Washington in favor of repealing the American export ban on unapproved drugs.

Mr. HATCH. Mr. President, we could go on and on debating these nuances in the law.

I do not think we have to spend the whole day today on this. I think we can do, if the Senator finds it satisfactory, is for him to lay down some of his amendments and begin voting at 2 o'clock tomorrow. At least, that is what the majority leader has indicated to me. We could have some stacked amendments ready to go—at least one, if not more than one—and we could debate those here today.

The Senator might lay down a few amendments today. If the Senator would prefer to wait until tomorrow, there is not much more we can do today. We could lay down at least one amendment and have 15 minutes to debate it tomorrow, from 2 to 2:15, and have a vote.

Mr. METZENBAUM. Mr. President, we do intend to lay down one or more amendments this afternoon. We will decide which one we want first. I know that the majority leader would like us to have at least a couple of amendments for tomorrow. The Senator from Ohio is considering laying down an amendment, and possibly a second one, providing for an hour debate between the first and the second.

I suggest that at this moment we put in a quorum call, and then we will decide.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1440

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1450

AMENDMENT NO. 1948

(Purpose: To amend section 412 of the Federal Food, Drug, and Cosmetic Act, relating to requirements for infant formulas)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1948.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end, add the following:

SEC. 9. Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (h), (i), and (j), respectively;

(2) by striking out the last sentence of paragraph (1) of subsection (h) (as redesignated by clause (1) of this section) and inserting in lieu thereof the following new sentence: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.";

(3) by striking out "subsection (a)(2)" in subsection (j) (as redesignated by clause (1) of this subsection) and inserting in lieu thereof "subsection (a)(3)"; and

(4) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a)(1) An infant formula (including infant formula powder) shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (j);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under this section.

"(2)(A) The Secretary shall by regulation—

"(i) establish requirements for quality factors for infant formulas, including requirements for the nutrients required by subsection (j);

"(ii) establish—

"(I) good manufacturing practices for infant formulas, including quality control procedures; and

"(II) requirements respecting the retention of records,

that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this section and will not cause harm; and

"(iii) establish requirements for the conduct by the manufacturer of an infant formula of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under clause (ii).

"(B) The good manufacturing practices and quality control procedures prescribed by the Secretary under subparagraph (A)(ii) shall include requirements for—

"(i) the testing of each batch of infant formula for each nutrient required pursuant to subsection (j) prior to the distribution of such batch in order to ensure the such formula is in compliance with this section and does not contain any deleterious or otherwise unsafe substance; and

"(ii) regularly scheduled testing of samples of infant formulas during the shelf life of such formulas in order to ensure that such a formulas are in compliance with this section and do not contain any deletrious or otherwise unsafe substance.

"(C) The record retention requirements prescribed by the Secretary under paragraph (A)(ii) shall include requirements for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under such subparagraph, including records containing the results of all testing required by subparagraph (B);

"(ii) the retention of copies of all records prepared by suppliers of raw materials and food packaging materials used in the processing of infant formula to demonstrate compliance by such suppliers with all regulations, guidelines, and action levels prescribed by the Secretary with respect to such raw materials and food packaging materials and with respect to infant formula;

"(iii) the retention of all records pertaining to the microbiological quality and purity of raw materials used in infant formula and of finished infant formula (including infant formula powder);

"(iv) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under subparagraph (A)(iii); and

"(v) the maintenance of files with respect to, and the review of, complaints concerning infant formulas.

Records required under this paragraph with respect to an infant formula shall be retained for at least one year after the expira-

tion of the shelf life of such infant formula. Such records shall be made available to the Secretary for review and duplication upon request of the Secretary.

"(D) In prescribing requirements for audits under subparagraph (A)(iii), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for ensuring that the manufacturer of an infant formula complies with the regulations prescribed by the Secretary under subparagraph (A)(ii).

"(3) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (j); and

"(B) revise the required level for any nutrient required by subsection (j).

"(b) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless an application has been filed pursuant to subsection (c) with respect to such formula and such application has not been disapproved. For purposes of this section, the term 'new infant formula' includes any infant formula for which there has been a change in formulation or processing which may affect whether the formula is adulterated within the meaning of this section.

"(c) A person shall, with respect to any infant formula subject to the provisions of subsection (b), file with the Secretary an application. Each such application shall include—

"(1) full reports of testing demonstrating that such infant formula provides nutrients in accordance with subsection (j) and complies with the quality factor requirements prescribed by the Secretary under subsection (a)(2)(A)(i);

"(2) records demonstrating that the processing of such infant formula complies with the regulations prescribed by the Secretary under subsection (a)(2)(A)(ii); and

"(3) such additional information as the Secretary may by regulation prescribe.

"(d) Within ninety days after an application is filed under subsection (c), or prior to the end of such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall either—

"(1) approve the application if the Secretary finds that the infant formula complies with the requirements of this section and the regulations prescribed by the Secretary under subsection (a)(2)(A); or

"(2) deny the application.

"(e) An applicant whose application has been denied under subsection (d)(2) may appeal such denial pursuant to procedures specified in regulations prescribed by the Secretary. After the applicant has exhausted the remedies specified in such procedures, the applicant may appeal the denial of such application to the United States court of appeals for the circuit wherein such applicant resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of the Secretary's final order denying such application.

"(f)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (j); or

"(B) may be otherwise adulterated or misbranded, the manufacturer shall promptly notify the Secretary of such knowledge and shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, and to assist such retail establishments in publicizing such recall in a manner reasonably designed to notify purchasers of such infant formula of such recall and the reasons for such recall.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(g)(1) If a recall of an infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation—

"(A) prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall; and

"(B) require the posting of a notice of any recall of an infant formula at each place where such formula is sold or was available for sale.".

Mr. METZENBAUM. Mr. President, this is an amendment that I am offering in connection with the interest of a group called "Formula." "Formula" is a national nonprofit parent's organization that was created 7 years ago by Carol Laskin and Lynne Pilot when their two children became seriously ill after consuming the defective infant formula Neo-Mull-Soy. Since then, more than 70,000 parents have been in touch with Carol Laskin and Lynne Pilot.

They have urged us to adopt this amendment in a letter which reads as follows:

DEAR SENATOR: We need your support of the proposed amendments to section 412 of the Food, Drug, and Cosmetic Act, relating to the requirements for infant formulas:

They go on to say I intend to offer their amendments to the drug export bill.

The letter further reads:

When the Infant Formula Act was signed into law in 1980, it set nutrient standards for all infant formulas, and gave the FDA authority to promulgate quality control regulations.

Why does this law need to be amended now?

The answer is very simple. Defective infant formula can still reach consumers because *manufacturers are not required to test each batch of infant formula for all of the nutrients specified in the law before it leaves the factory. (See attached list.)*

And I will come back to the attached list. Said they:

The need to correct this problem was pinpointed by Judge Kenneth H. Starr in his recent opinion before the U.S. Court of Appeals for the District of Columbia Circuit in which he acknowledged that "deficient formula * * * could be on grocery store shelves for three months before the required periodic analysis would detect the deficiency". (No. 84-5747, Dec. 31, 1985, p. 32.)

The proposed amendments will:

1. Require manufacturers to test each batch of infant formula for each legally mandated nutrient before the formula leaves the factory.

2. Provide that nutrient levels be routinely tested throughout the product's shelf-life.

3. Require manufacturers to test each batch of formula for hazardous extraneous materials (e.g., heavy metals, carcinogens, pesticides, and other industrial contaminants).

4. Ensure that record retention requirements apply to infant formula powders.

5. Provide for point-of-purchase recall notification.

We believe these amendments will provide protection for our Nation's most precious resource—our children.

Mr. President, I remember when we passed the first infant formula bill. It was during the administration of President Carter. I remember going down to the White House for the signing of the bill as one of the cosponsors of that legislation. There was such a sense of excitement by these women and children and other women because finally we had done something to see to it that our Government protects infants from formula that truly should not be ingested by those babies. We thought that we had won that battle. It was an exciting day.

But, unfortunately, the Food and Drug Administration did not provide the kind of protection which they were expected to provide. Instead, they made it possible for infant formula manufacturers to set their own standards as to what is and is not safe. And, as a consequence of their failure to do that which they should have done, the list, which is attached to the letter from the group called Formula headed up by these two women, reads as follows:

PROBLEMS WITH INFANT FORMULAS SINCE 1982

1. *Wyeth.* More than 3 million cans of SMA and Nursoy recalled because they lacked vitamin B6. (1982)

2. *Abbott-Ross.* Similac and Isomil found to contain carcinogens trichlorethylene (TCE) and perchlorethylene (PCE) due to contaminated well water. FDA considers these "weak carcinogens" and does not order a recall. (Food & Chemical News, Nov. 28, 1983). In July 1985, American Academy of Pediatrics asks for sampling of groundwater, a testing procedure which FORMULA proposed back in 1982.

3. *Loma Linda.* Soyalac Powder (16 oz. cans) recalled because of a loss of vitamin A activity (August 1983).

4. *Filmore Foods.* Naturlac (distributed by Sunshine & Rainbow and sold in health food stores) recalled because of a lack of thiamine copper, and vitamin B6. (Food & Chemical News, Sept. 12, 1983)

5. *Scott Treadway (Kama Nutritional).* Kama-Mil Powder recalled by Wishing Well Distributing Co. and Threshold Enterprises because product deficient in folacin, zinc, and vitamin D. Class I recall. Product never registered with FDA. Someone notified FDA anonymously. FDA has had difficulty in locating manufacturer. (Food & Chemical News, April 22, 1985)

6. *Scott Treadway (Kama Nutritional).* Nutra-Milk Powder recalled by Wishing Well Distributing Co., Threshold Enterprises, and Stowe Mills. Class I recall. Nutrient deficiencies and lack of registration. Manufactured from 1980–1985 without FDA's knowledge. FDA has had difficulty in locating manufacturer. (1985)

7. *Gerber Foods.* Gerber Meat Base Formula (MBF) recalled because some lots contained excess vitamin A. Gerber had purchased the vitamin premix from Watson Food Company. (Food & Chemical News, Feb. 25, 1985)

8. *Ross-Abbott.* Three reformulations made without notifying FDA: (a) revision in the concentation of total solids, fat, and protein for Similac with Whey ready-to-feed, (b) revision of the mineral premix used in Similac with Iron and Similac with Whey Plus Iron, and (c) reduction of the protein levels and change in the mineral source for calcium and phosphorus for Isomil ready-to-feed and concentrate. (Food & Chemical News, July 29, 1985)

9. *Loma Linda.* Soyalac Powder (1.2 oz. foil pouches provided to physicians as samples) recalled because of progressive vitamin A degradation. (FDA Enforcement Report, Feb. 12, 1986)

10. *Powdered Formulas.* There are no provisions for the FDA to examine quality control and production records of powdered formulas. Unlike liquid infant formulas, powdered formulas are not covered by existing low acid canned food regulations. According to a Michigan FDA investigator, this situation could result in "serious food borne disease in infant formula powders." (Food & Chemical News, July 9, 1984)

11. *Watson Foods Company.* The U.S. Department of Justice filed a motion for a preliminary injuction because "as a result of inadequate quality control, numerous Watson vitamin and mineral mixes [used in infant formulas] have been misbranded and adulterated." (Department of Justice statement, Jan. 2, 1986)

Mr. President, I recited all of those because I wanted to make it clear—not that somebody was going to understand the specifics of that which I was reciting—but to make it very clear that the problem with respect to infant formulas being sold in the marketplace today is not an isolated instance. It is not just one company. It is not some off-brand company. It is a fact that the babies of this Nation who are taking infant formula are constantly exposed to infant formula that is not safe for them to ingest into their little tummies.

□ 1500

Mr. President, it is my strong feeling that we need to add to this bill that has to do with drug exports some prohibition in order to provide for the protection of the infant formula being sold in this country. We thought we had achieved that objective some years ago during the Carter administration. Obviously the Food and Drug Administration emasculated the original intent of the drafters of the bill.

Now I think it is necessary that we go back with legislation in order that we can make it unequivocally clear that we expect protection for babies as far as it pertains to the infant formula that they are using and their mothers are feeding them.

Mr. President, I ask unanimous consent that the vote in connection with this amendment occur at 2:30 tomorrow after half-hour of debate on the bill.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. I withhold that temporarily.

Mr. President, in order that this matter may be cleared with the appropriate parties responsible for action on the floor of the Senate, I withdraw my unanimous-consent request at this moment. But let me explain what the Senator from Ohio expects to do as far as tomorrow's activities are concerned.

I was prepared in accordance with my understanding with the majority leader to come in early tomorrow morning and start action in connection with a number of amendments that the Senator from Ohio has. I was prepared to come in at 9, 9:30, or whatever the case my be in accordance with the discussion I previously had with the majority leader.

I am now advised that the majority leader and those who are responsible for handling the floor on the other side of the aisle have indicated that they would prefer there not be any votes in the morning, and that there would be votes in the afternoon. I am prepared to move forward in connection with the various amendments that I have. But I do want to have some assurance from the manager of the bill who I assume would be speaking for the majority leader that I will not be precluded—by reason of that fact or by reason of some other Senator calling up one of his amendments that is permitted by the original unanimous-consent request—from offering a number of other amendments the Senator from Ohio has, and not find myself squeezed in toward a 1 o'clock final vote time on this bill.

Mr. HATCH. Let me just say that I cannot speak for the majority leader. But I can assure the Senator from Ohio that I am willing to stay late tomorrow night and allow adequate time for him to bring up his amendments. I do believe the majority leader will expect us to have a final up or down vote on passage at 1 o'clock on Wednesday. But I believe there will be adequate time for the distinguished Senator from Ohio to present his amendments. I do not know of anyone who would try to prohibit him or interfere with his right to present those amendments and allow whatever time he desires between now and 1 o'clock Wednesday.

I am willing to stay as manager of the bill tomorrow evening so that he will have adequate time.

Mr. METZENBAUM. I would like to get that assurance so I may be certain.

Mr. HATCH. I cannot give the Senator that assurance. I think 1 o'clock is by unanimous consent.

Mr. METZENBAUM. I believe that is the case. I think I would like to explore the matter with the majority leader before placing a unanimous-consent request because otherwise I think I would like to work starting at 9 or 9:30.

Mr. HATCH. I have no objection to that. But I understand the morning is clouded by the fact they have an executive session, a number of special orders, and then they have the ceremony for Anatoly Shcharansky, to which almost everybody wants to go.

Mr. METZENBAUM. I expect to go to the Shcharansky ceremony.

Mr. HATCH. We also have, as the Senator knows, the caucuses for both parties tomorrow between 12:30 and 2. So 2 is about the earliest we can get started.

Mr. METZENBAUM. We could start at 8:30 or 9 o'clock as far as the Senator from Ohio is concerned, and have one or two votes early in the morning, if that is convenient with the majority leader.

Mr. HATCH. As far as I know, neither side wants to have votes before 10:30. That is when the Shcharansky ceremony starts.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COHEN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, with regard to the distinguished Senator's pending amendment, I just saw the amendment today. So I would state that we will develop answers that more fully address this amendment. But first, this particular subject—that is, infant formula—has nothing to do with the pharmaceutical export amendments, the bill before us. It is certainly a nongermane amendment. It has nothing to do with this particular bill, and would not only cloud the issue but could be very detrimental to the bill. These proposals have not been examined nor have they been voted upon by our committee.

Its adoption at this time would be premature, although the Senator does raise issues that we have to look at and address. Second, there is no evidence, not any, not anywhere, that the current infant formula law is not working. It is working. The Senator has noted a series of recalls but, to the best of my knowledge, they fall into two categories: First, people who produce infant formula are already covered by existing law. No law will restrain the unlawful. Those who ignore the laws are going to do it anyway; second, deficiencies in formula that were discovered before they came to market show that the current law is working. These examples fall is one of these categories: Those who are breaking the current law, or examples where the law has worked, found the deficiencies, and caught them before they came to the market.

So none of these examples justify the amendment the Senator is proposing. I might add that in my judgment, these amendments are impractical, and will be opposed by the Food and Drug Administration. One of the problems with the proposal to every nutrient in every batch is that some of these tests take months, and the decrease in shelf life would be significant as would be the increase in expense.

There is no way I can support this amendment, and I not think anybody who really understands pharmaceutical law or really understands what goes on in FDA and in the pharmaceutical industry or in the infant formula industry would really support this particular amendment at this time. There may be some issues raised that may deserve hearings, and the committee in the future wil certainly look at that.

That is about all I would care to say about the distinguished Senator's amendment today. I will add some more tomorrow. I hope this amendment will be defeated because this has nothing to do with this legislation. I think there are plenty of answers to what the distinguished Senator has brought forth.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

1510

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1949

(Purpose: To require the Secretary to enter into agreements to obtain information about the export of drugs)

Mr. METZENBAUM. Mr. President, I ask unanimous consent that, for purposes of my offering a second amendment, the first amendment be temporarily laid aside and that I be permitted to send an amendment to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1949.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 37, between lines 20 and 21, insert the following:

"(9) For the purpose of implementing and monitoring compliance with the requirements of this subsection, the Secretary shall enter into agreements with or utilize the services of any foreign government or United States embassy in a foreign country to obtain drug labeling used in any foreign country or information available in a foreign country with respect to the safety and effectiveness of drugs.".

AMENDMENT NO. 1950

(Purpose: To require that the same conditions apply to the export of antibiotic drugs as apply to other drugs)

Mr. METZENBAUM. Mr. President, I ask unanimous consent that for the purpose of my offering a third amendment, the first two amendments be temporarily laid aside and that I be permitted to offer an amendment at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1950.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 37, between lines 20 and 21, insert the following:

"(9) An antibiotic drug which is subject to certification by the Secretary under section 507 may be shipped for export only to a country described in paragraph (2) and only if the antibiotic drug meets the requirements of paragraph (3).

SEC. 4. (a)(1) The provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act, as added by section 3 of this Act, shall not apply, for a period of one year beginning on the date of enactment of this Act, to any antibiotic drug which—

(A) is subject to certification by the Secretary of Health and Human Services under section 507 of the Federal Food, Drug, and Cosmetic Act;

(B) has been exported prior to the date of enactment of this Act;

(C) does not comply with the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act, as added by section 3 of this Act; and

(D) complies with the provisions of paragraph (2).

(2) An antibiotic drug to which paragraph (1) applies may be exported if—

(A) such antibiotic drug has not been the subject of final action by the Secretary of Health and Human Services denying, withdrawing, or suspending approval or certification of such antibiotic drug on the basis of safety and effectiveness, or otherwise banning such antibiotic drug on such basis; and

(B) such antibiotic drug is not the subject of a notice by the Secretary of Health and Human Services of a determination that the sale of such antibiotic drug in the foreign country to which such antibiotic drug is to be exported is contrary to the public health and safety of such country

(b) The Secretary of Health and Human Services may extend the one-year period for which, pursuant to subsection (a)(1), the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act do not apply to an antibiotic drug if the Secretary determines that the manufacturer of such antibiotic drug is making a good faith effort to comply with the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act, as added by section 3 of this Act, with respect to such antibiotic drug. Any extension under this subsection shall be for a period not in excess of one year.

Mr. METZENBAUM. Mr. President, in order that there may be an understanding of what has transpired on the floor at the moment, the Senator from Utah and the Senator from Ohio are not in disagreement as to our being able to call these amendments up shortly after the respective caucuses conclude at 2 o'clock tomorrow and proceeding to a vote in connection with each of them. However, it has been suggested that the majority leader and the minority leader have to be consulted. For that reason, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, the Senator from Utah and the Senator from Ohio have been talking about a unanimous-consent agreement as to when these amendments will be voted upon with time limits. We both agree that there is really no necessity for doing that. Members of the Senate should be advised shortly after the respective caucuses occur there will be a short period of debate, probably about a half hour equally divided, on the first amendment, and then there will be a short period of debate in connection with the second amendment, and a relatively short period of debate in connection with the third amendment.

There should be three amendments that will come up for a vote in the early afternoon tomorrow.

The Senator from Ohio has some additional amendments that he will be offering during the remainder of the day. I make these statements in order that all Members may be apprised of that which is going to come. Other Senators may have amendments to offer also.

Mr. HATCH. Mr. President, with that, I suggest the absence of a quorum, and I suggest that since there will be no further debate on these amendments, there will be no further debate on the bill the rest of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, the distinguished Senator from Ohio has called up three amendments, I ask unanimous consent that those three amendments be voted upon in the order in which they were called up after reasonable periods of time for debate, which has already been expressed by the distinguished Senator from Ohio.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, and I certainly do not intend to object, I assume that the unanimous-consent agreement heretofore entered into will not be displaced by this particular unanimous-consent request,

Mr. HATCH. Mr. President, there was no prior unanimous-consent agreement.

□ 1520

The PRESIDING OFFICER. The Chair will recall that the Senator withdrew his unanimous-consent request before it was acted upon by the Chair.

Mr. METZENBAUM. The one that the Senator from Ohio is referring to is the one that was entered into before we went out last week.

The PRESIDING OFFICER. This will not displace that unanimous-consent agreement.

Mr. HATCH. All this will do is set the order in which the amendments will be voted upon with reasonable time for debate in between.

The PRESIDING OFFICER. Without objection, it is so ordered,

Mr. HATCH. Mr. President, I suggest the absence of a quorim.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATCH. As I understand it, the three votes tomorrow will occur in relation to the three amendments in the order that they were called up. I ask unanimous consent that the votes with relation to the three amendments be in the order that they were called up.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. (Mr. COHEN). The Chair, in his capacity as the Senator from Maine, suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1540

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. the Senator from Wyoming is now recognized. The Chair was going to suggest something else.

Mr. SIMPSON. The Chair was going to say Montana. I know how easterners are.

Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. We have the same difficulty in the West, mixing up New Hampshire, Vermont, and Maine, you see. What happens in the Senator's area, they mix up Montana, Colorado, and Wyoming, but not the occupant of the chair, my old friend from Maine, who came here when I did.

RACINE HARBOR, WISCONSIN, IMPROVEMENTS

Mr. SIMPSON. Mr. President, I have conferred with the Democratic leader. I appreciate his consideration of my scheduling. With that, I ask unanimous consent the Senate now turn to the consideration of H.R. 4767, dealing with Racine Harbor, WI.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4767) to deauthorize the project for improvements at Racine Harbor, WI.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendments to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4767) was ordered to a third reading, was read the third time, and passed.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to table the motion.

The motion to lay on the table was agreed to.

ORDER FOR RECORD TO REMAIN OPEN

Mr. SIMPSON. Mr. President, I ask unanimous consent that the RECORD remain open until 5 p.m. today, Monday, May 12, for the introduction of bills, resolutions, and the submission of statements.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TOMORROW

Mr. SIMPSON. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. on Tuesday, May 13, 1986.

I further ask unanimous consent that following the recognition of the two leaders under the standing orders, there be special orders in favor of the following Senators for not to exceed 5 minutes each: HAWKINS, CRANSTON, PROXMIRE, WEICKER, and MCCONNELL.

I also ask unanimous consent that following the special orders just identified, there be a period for the transaction of routine morning business not to extend beyond 10:45 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

I ask unanimous consent that the Senate stand in recess between the hours of 10:45 a.m. and 2 p.m. in order for the Senate to attend the ceremony in the rotunda for Natan (Anatoly) Shcharansky and for the weekly party caucuses to then meet.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

PROGRAM

Mr. SIMPSON. Mr. President, when the Senate reconvenes at 2 p.m., pending will be the unfinished business, S. 1848, the drug export bill. Votes can be expected during the day of Tuesday. There were three Metzenbaum amendments offered today. The Senate could be in session into the evening in order to make certain progress on the drug export bill.

RECESS UNTIL 10 A.M. TOMORROW

Mr. SIMPSON. Therefore, Mr. President, in accordance with the previous order, I move the Senate stand in

recess until 10 a.m. Tuesday, May 13, 1986.

The motion was agreed to, and, at 3:37 p.m., the Senate recessed until Tuesday, May 13, 1986, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate May 12, 1986:

DEPARTMENT OF STATE

John Dale Blacken, of Washington, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guinea-Bissau.

Paul Matthews Cleveland, of Florida, a career member of the Senior Foreign Service, class of minister-counselor, now Ambassador Extraordinary and Plenipotentiary of the United States of America to New Zealand, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Western Samoa.

Patricia Gates Lynch, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Madagascar and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal and Islamic Republic of the Comoros.

Vernon Dubois Penner, Jr., of New York, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cape Verde.

Harry W. Shlaudeman, of California, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federative Republic of Brazil.

DEPARTMENT OF DEFENSE

Edward C. Aldridge, Jr., of Virginia, to be Secretary of the Air Force, vice Russell A. Rourke, resigned.

DEPARTMENT OF AGRICULTURE

Peter C. Myers, of Missouri, to be Deputy Secretary of Agriculture, vice John R. Norton III, resigned.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Robert B. Helms, of Maryland, to be an Assistant Secretary of Health and Human Services, vice Robert J. Rubin, resigned.

Robert E. Windom, of Florida, to be an Assistant Secretary of Health and Human Services, vice Edward N. Brandt, Jr. resigned.

ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Theodore J. Garrish, of Virginia, to be Federal Inspector for the Alaska Natural Gas Transportation System, vice John T. Rhett, resigned.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Clarence Thomas, of Missouri, to be a Member of the Equal Employment Opportunity Commission for the term expiring July 1, 1991. (Reappointment.)

FEDERAL EMERGENCY MANAGEMENT AGENCY

George Woloshyn, of Virginia, to be an Associate Director of the Federal Emergency Management Agency, vice Charles M. Giarard, resigned.

FEDERAL MARITIME COMMISSION

Edward V. Hickey, Jr., of Virginia, to be a Federal Maritime Commissioner for the term expiring June 30, 1991. (Reappointment.)

IN THE COAST GUARD

The following Reserve officers of the U.S. Coast Guard to be permanent commissioned officers in the grades indicated:

to be lieutenant commander

Alan R. Dujenski
Tom R. Wilson

to be lieutenant

Robert G. Lambourne
Bruce E. Leek
Raymond J. Miller
Paul L. Newman
Daniel A. Swedenborg

to be lieutenant (junior grade)

Stephen D. Austin
William V. Bennett
James D. Bjostad
Michael D. Brand
Philip E. Bray
John A. Campbell, Jr.
James H. Candee
Christopher A. Canty
Terrence W. Carter
Sergio D. B. Cerda
Timothy P. Crowley
Gail A. Donnelly
Stanley M. Douglas
John C. Edgar
John D. Filipowicz
Kevin C. Fitzpatrick
Janney F. Florey
Paul A. Francis
Donald L. Franklin
Arthur C. Gotisar
James E. Holbert
Blaine H. Hollis
Joseph M. Jacobs
David L. Jones
Margaret E. Jones
Lori A. Keller
Davalee G. Kenny
Bradley T. Lucak
Richard S. MacIntyre
Joe Mattina, Jr.
John A. McCarthy
Michael C. McColoughan
Mark L. McEwen
Donald N. Miller
Robert J. Moers
Patrick W. Murphy
Stephen C. Nesel
Mark B. Northrup
Robert M. O'Brien
Chris Oelschlegel
Donald E. Ouellette
Mark S. Palmquist
Manuel G. Perez
Kristin M. Quann
Adolfo D. Ramirez
Craig H. Ridnour
Derek H. Rieksts
Kevin M. Robb
Gean S. Rockhill
Scott G. Seiple
James M. Sellers
Gilbert E. Sena
Verne R. Skagerberg
Mark A. Skordinski
Gregg W. Stewart
Dennis Stoner
Donald K. Strother
Margaret F. Thurber
Michael K. Van Doren
Peter S. Virok
Lee E. Wetzel
Norvell E. Wicker
John C. Williams

The following Regular officer to be a member of the permanent commissioned teaching staff of the Coast Guard Academy as an instructor in the grade of lieutenant commander:

Ronald A. Nilsen

The following-named officers to be permanent commissioned officers in the Coast Guard having been found fit for duty while on the temporary disability retired list in the grades indicated:

To be chief warrant officer, w2:

Raymond J. Cox

To be chief warrant officer, w4:

Robert S. Samuelson

IN THE NAVY

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370.

To be vice admiral

Vice Adm. Robert E. Kirksey, [redacted]/1310, U.S. Navy.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Vice Adm. John M. Poindexter, [redacted]/1110, U.S. Navy.

IN THE MARINE CORPS

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Clyde D. Dean [redacted], U.S. Marine Corps.

IN THE AIR FORCE

The following officers for appointment in the Regular Air Force under the provisions of section 531, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform duties indicated with grade and date of rank to be determined by the Secretary of the Air Force provided that in no case shall the following officers be appointed in a grade higher than that indicated.

MEDICAL CORPS

To be colonel

Cruz-Jimenez, Pedro R., [redacted]
Meyer, George W., [redacted]

To be lieutenant colonel

Sinha, Nanda K., [redacted]

To be major

Alford, Anthony L., [redacted]
Gagnier, James M., [redacted]

DENTAL CORPS

To be lieutenant colonel

Donahue, William J., [redacted]
Lieb, Lewis V., Jr., [redacted]
McAlpine, George J., [redacted]
Ursano, Robert J., [redacted]

To be major

Baiorunos, Barry J., [redacted]
Balzer, Richard R., [redacted]
Ippolito, Stephen P., [redacted]

McMichael, David W., xxx-xx-xxxx
Moore, William S., xxx-xx-xxxx
Schmidt, Stephen A., xxx-xx-xxxx
Shulman, Elliot R., xxx-xx-xxxx

To be captain

Ammon, Douglas J., xxx-xx-xxxx
Livingston, Robin L., xxx-xx-xxxx
Mealey, Brian L., xxx-xx-xxxx
Messenger, Kay L., xxx-xx-xxxx
O'Conor, Casey L., xxx-xx-xxxx
Onnink, Paul A., xxx-xx-xxxx
Read, Daniel S., xxx-xx-xxxx
Stentz, William C., Jr., xxx-xx-xxxx

The following-named officers for reappointment to the Active Duty list of the Regular Air Force in the grade indicated under the provisions of sections 1210 and 1211, title 10, United States Code.

LINE OF THE AIR FORCE

To be colonel

Parrish, John A., Jr. xxx-xx-xxxx

TO BE CAPTAIN

Arnold, James E., xxx-xx-xxxx

The following individuals for appointment as Reserve of the Air Force, in the grade indicated, under the provisions of section 593, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Arnold, Frederick S., xxx-xx-xxxx
Brown, Eldon, J., xxx-xx-xxxx
Crine, James D., xxx-xx-xxxx
Heldt, Leroy V., xxx-xx-xxxx
Ng Chi-Kin xxx-xx-xxxx
Prosperie, Michael D., xxx-xx-xxxx
Wilson, John E., xxx-xx-xxxx

The following individuals for appointment as Reserve of the Air Force [ANGUS], in the grade indicated under the provisions of sections 593 and 8351, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Baysa, Norberto, xxx-xx-xxxx
Stanley, Ronnie L., xxx-xx-xxxx

The following Air Force officer for permanent promotion in the U.S. Air Force, in accordance with section 624, title 10, United States Code, with date of rank to be determined by the Secretary of the Air Force.

DENTAL CORPS

To be major

Hofman, John W., xxx-xx-xxxx

IN THE AIR FORCE

The following persons for Reserve of the Air Force appointment, in grade indicated, under the provisions of section 593, title 10, United States Code, with a view to designation under the provisions of Section 8067, Title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Griffin, Warren L., Jr., xxx-xx-xxxx
Kimble, Edward T., III, xxx-xx-xxxx
Doscher, Crile, xxx-xx-xxxx
Linsenmeyer, Charles M., xxx-xx-xxxx
Stoner, John C., xxx-xx-xxxx
Garner, Wade S., xxx-xx-xxxx

The following officer for Reserve of the Air Force (non-EAD) promotion in the grade indicated, under the provisions of section 8367, title 10, United States Code.

MEDICAL CORPS

To be lieutenant colonel

Smith, Frank L., xxx-xx-xxxx

IN THE AIR FORCE

The following Air National Guard of the United States officers for promotion in the Reserve of the Air Force under the provisions of sections 593 and 8379, title 10 of the United States Code. Promotions made under section 8379 and confirmed by the Senate under section 593 shall bear an effective date established in accordance with section 8374, title 10 of the United States Code (effective date in parenthesis).

LINE OF THE AIR FORCE

To be lieutenant colonel

Maj. Joseph M. Bauer, xxx-xx-xxxx (1/5/86).
Maj. Gregory J. Beckel, xxx-xx-xxxx (1/28/86).
Maj. Randy L. Buby, xxx-xx-xxxx (1/4/86).
Maj. Ferdinand J. Chabot, xxx-xx-xxxx (1/22/86).
Maj. Michael D. Coffey, xxx-xx-xxxx (2/10/86).
Maj. Tommy L. Daniels, xxx-xx-xxxx (2/20/86).
Maj. Tommy L. Delong, xxx-xx-xxxx (2/3/86).
Maj. Jeffrey D. Felder, xxx-xx-xxxx (1/11/86).
Maj. Thomas W. Ham, xxx-xx-xxxx (1/11/86).
Maj. Charles A. Hardesty, xxx-xx-xxxx (1/16/86).
Maj. Terry P. Heggemeier, xxx-xx-xxxx (1/10/86).
Maj. Michael P. Hickey, xxx-xx-xxxx (2/1/86).
Maj. Edwin H. Hornung, xxx-xx-xxxx (1/26/86).
Maj. Michael B. Kane, xxx-xx-xxxx (1/25/86).
Maj. Stanley W. Karod, xxx-xx-xxxx (1/29/86).
Maj. Roger H. Legg, xxx-xx-xxxx (2/2/86).
Maj. Patrick M. Loftus, xxx-xx-xxxx (12/20/85).
Maj. Alexander T. Mahon, xxx-xx-xxxx (2/1/86).
Maj. Peter T. McInerney, Jr. xxx-xx-xxxx (2/1/86).
Maj. Bruce A. Michel, xxx-xx-xxxx (2/1/86).
Maj. William F.B. Morris, xxx-xx-xxxx (11/22/85).
Maj. James A. Mullen, xxx-xx-xxxx (2/2/86).
Maj. John W. Newman, xxx-xx-xxxx (1/4/86).
Maj. Nicholas L. Nichols, xxx-xx-xxxx (1/24/86).
Maj. Ronal N. Parsom, xxx-xx-xxxx (2/8/86).
Maj. James N. Pieczko, xxx-xx-xxxx (2/19/86).
Maj. John W. Pospisil Jr. xxx-xx-xxxx (12/15/85).
Maj. Michael J. Ragan, xxx-xx-xxxx (1/30/86).
Maj. Dean O. Sabby, xxx-xx-xxxx (1/10/86).
Maj. Douglas C. Shelton Jr. xxx-xx-xxxx (1/5/86).
Maj. Eugene G. Simone, xxx-xx-xxxx (1/4/86).
Maj. Conrad L. Slate, xxx-xx-xxxx (1/12/86).
Maj. Bruce A. Smith, xxx-xx-xxxx (1/4/86).
Maj. William A. Steene, xxx-xx-xxxx (1/13/86).
Maj. Stephen J. Stubits, xxx-xx-xxxx (1/4/86).
Maj. Roger F. Taylor, xxx-xx-xxxx (1/11/86).
Maj. Edward W. Tonini, xxx-xx-xxxx (1/12/86).
Maj. John F. Vandomelen, xxx-xx-xxxx (1/11/86).
Maj. Richard E. Vanroo, xxx-xx-xxxx (2/8/86).
Maj. Gary B. Willems, xxx-xx-xxxx (11/2/85).

CHAPLAIN

To be lieutenant colonel

Maj. Bobby O. Edwards, xxx-xx-xxxx (2/8/86).

LEGAL

To be lieutenant colonel

Maj. Gregg L. Cunningham, xxx-xx-xxxx (1/7/86).
Maj. Dennis D. Hogan, xxx-xx-xxxx (2/2/86).

MEDICAL CORPS

To be lieutenant colonel

Maj. Wayne C. Cole, xxx-xx-xxxx (1/12/86).
Maj. Breck J. Lebegue, xxx-xx-xxxx (1/11/86).
Maj. John D. Mullins, xxx-xx-xxxx (1/3/86).
Maj. Bhupendrakumar S. Patel, 325-56-8278 (7/13/85).

NURSE CORPS

To be lieutenant colonel

Maj. Susan J. Troyer, xxx-xx-xxxx (1/9/86).

IN THE MARINE CORPS

The following named U.S. Naval Academy graduates for permanent appointment to the grade of second lieutenant in the U.S. Marine Corps, pursuant to title 10, United States Code, section 531:

Acosta, Robert G., xxx-...
Aguilar, Leonard J., xxx-...
Allen, Michael A., xxx-...
Allen, Timothy C., xxx-...
Atkinson, Craig A., xxx-...
Baczkowski, Daniel K., xxx-...
Bader, Robert T., xxx-...
Baker, John O., III, xxx-...
Barbon, Richard S., xxx-...
Beil, Bradley, G., xxx-...
Bellinger, Matthew F., xxx-...
Bellistri, Jeffrey M., xxx-...
Benden, Christopher P., xxx-...
Bruce, Thomas D., xxx-...
Cadwell, Michael G., xxx-...
Calandra, Joseph P., xxx-...
Caldwell, Vernon P., xxx-...
Campion, Christopher L., xxx-...
Carpenter, Jerry A., xxx-...
Casados, Christopher D., xxx-...
Castelli, Christopher W., xxx-...
Castro, Stephen J., xxx-...
Chase, Eric T., xxx-...
Choi, Rodney M., xxx-...
Collins, Kipp A., xxx-...
Collins, Thomas D., II, xxx-...
Cooling, Norman L., xxx-...
Cooper, Douglas W., Jr., xxx-...
Crouse, Jay B., III, xxx-...
Curry, Timothy M., xxx-...
Dahl, Jeffrey M., xxx-...
Dalton, Rustin L., xxx-...
Deeming, Shaun A., xxx-...
Dell, Ernest E., III, xxx-...
Demers, Paul. R., xxx-...
Devino, Anthony J., xxx-...
Dewaele, David P., xxx-...
Diverde, Michael T., xxx-...

Doran, Thomas J., xxx-...
Dougherty, Charles A., xxx-...
Dragan, William G., xxx-...
Dubinok, Jefferson L., xxx-...
Dufresne, Daniel F., xxx-...
Durand, James F., xxx-...
Edwards, Douglas T., xxx-...
English, David M., xxx-...
Eustace, John R., xxx-...
Fitzpatrick, Barry J., Jr., xxx-...
Flinter, William P., xxx-...
Flores, Jeffrey D., xxx-...
Flores, Mark W., xxx-...
Fresqeuz, Ricardo L., xxx-...
Fujishige, Keith K., xxx-...
Garay, Roger A., xxx-...
Gentry, Keil R., xxx-...
Glavy, Mathew G., xxx-...
Gleason, Daniel C., xxx-...
Goodman, Eric G., xxx-...
Gosney, James, E., Jr., xxx-...
Greene, David S., xxx-...
Hall, Patrick W., xxx-...
Hall William G., xxx-...
Harris, Eddie D., xxx-...
Holcomb, James M., xxx-...
Horney, Aaron K., xxx-...
Howo, James F., xxx-...
Hoyt, Lance M., xxx-...
Hubbard, Garret H., xxx-...
Iiams, Alfred, R., III, xxx-...
Jones, Marius B., xxx-...
Jones, Steven P., xxx-...
Jones, William A., xxx-...
Jonske, Louis J., Jr., xxx-...
Jordan, Dewey G., xxx-...
Kahler, Stewart D., xxx-...
Kelly, Michael A., xxx-...
Kenny, Michael F., xxx-...
Killion, Michael P., xxx-...
Kirby, Matthew, xxx-...
Kirby, Samual A., xxx-...
Kostrub, William M., xxx-...
Ladoucer, Todd M., xxx-...
Lagasca, Jason J., xxx-...
Lautrup, Joel, W., xxx-...
Lirette, Andrew J., xxx-...
Lorrin, Mark J., xxx-...
Lupton, Michael P., xxx-...
Lytikainen, Carl R., xxx-...
Mackenzie, Timothy J., xxx-...
MacMillan, Jack F., Jr., xxx-...
Magee, Richard A., xxx-...
Malley, Gregg P., xxx-...
Mann, Nancy E., xxx-...
Martinez, Jeffrey P., xxx-...
Masur, Daniel R., xxx-...
Mayberry, James S., xxx-...
Maye, Larry, xxx-...
Mazenko, Gregory J., xxx-...
McClelland, Charles B., xxx-...
McElroy, Terry S., xxx-...
McNutt, Jeffrey T., xxx-...
Meigs, Guy R., xxx-...
Meyer, Paul W., xxx-...
Miles, Glen, xxx-...
Miller, Mark D., xxx-...
Miller, Todd P., xxx-...
Mishik, Michael G., xxx-...
Moore, Nathan S., xxx-...
Morin, Roger J., xxx-...
Mosher, Jeffrey K., xxx-...
Muckelbauer, Matthew S., xxx-...
Nims, Stephen E., xxx-...
Olko, Ronald D., xxx-...
Owen, Peter F., xxx-...
Pagel, Brian S., xxx-...
Parks, Bryan K., xxx-...
Parkyn, Michael B., xxx-...
Pelkey, Jack D., xxx-...
Perkins, Glenn A., xxx-...
Poinsette, Raymond M., xxx-...
Pointon, George D., xxx-...
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